

Panaji, 20th January, 2022 (Pausa 30, 1943)

SERIES II No. 43

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are three Extraordinary issues to the Official Gazette, Series II No. 42 dated 13-01-2022 as follows:—

- (1) *Extraordinary dated 13-01-2022 from pages 991 to 992 regarding Notifications from Goa Legislature Secretariat & Department of General Administration.*
- (2) *Extraordinary (No. 2) dated 17-01-2022 from pages 993 to 996 regarding Direction and Notification from Department of Elections.*
- (3) *Extraordinary (No. 3) dated 18-01-2022 from pages 997 to 1004 regarding Notifications from Department of Elections.*

GOVERNMENT OF GOA

Department of Animal Husbandry & Veterinary Services

Directorate of Animal Husbandry & Veterinary Services

Notification

No. 8-1(93)/Part(Govt)/2021-22/6168

Read: Order No. 8-1(93)/2017-18/6640 dated 08-02-2018 of the Internal Complaints Committee.

In pursuance to Section 4 (1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, the Government of Goa is pleased to notify the reconstituted Internal Complaint Committee for North and South Goa comprising of following members.

North Goa

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| 1. Dr. Veena Kumar, Assistant Director | — Presiding Officer. |
| 2. Dr. Prakash Korgaonkar, Assistant Director | — Member. |
| 3. Dr. (Mrs.) Priya Dalal, Veterinary Officer | — Member. |
| 4. Mrs. Monica Fernandes, Upper Division Clerk | — Member. |
| 5. Mrs. Sushanti Tilve, Upper Division Clerk | — Member. |
| 6. Mrs. Auda Viegas (NGO Representative) | — Member. |

South Goa

- | | |
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| 1. Dr. Manik Patil, Veterinary Officer | — Presiding Officer. |
| 2. Dr. Natasha Coutinho, Veterinary Officer | — Member. |
| 3. Dr. Ransley Caldeira, Veterinary Officer | — Member. |
| 4. Mrs. Glenita Fernandes, Veterinary Assistant | — Member. |
| 5. Miss Gokuli Gangali, Veterinary Assistant | — Member. |
| 6. Mrs. Auda Viegas (NGO Representative) | — Member. |

A consolidated amount of Rs. 1500/- shall be paid per member towards sitting fees/day for Non Government Organizations only.

This issues with the approval of the Government vide U.O. No.7521 dated 12-11-2021 and Finance (Exp.) Department vide U.O. No.1400083565 dated 29-11-2021.

This Order supersedes the earlier issued aforesaid Order.

By order and in the name of the Governor of Goa.

Dr. *Agostinho Misquita*, Director & ex officio Jt. Secretary (AH).

Panaji, 17th January, 2022.

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Department of Labour

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Notification

No. 28/2/2021-LAB/Part-I/562

The following Award passed by the Labour Court-II, at Panaji-Goa on 20-10-2021 in Case No. Ref. LC-II/IT/12/2013 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).
Porvorim, 16th November, 2021.

IN THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before **Shri Suresh N. Narulkar**, Hon'ble
Presiding Officer)

Case No. Ref. LC-II/IT/12/2013

Shri Maruti B. Raut,
H. No. 84/4-1, Krupas,
Nageshi, Bandora,
Ponda-Goa

..... Workman/Party-I

V/s

M/s. Gomantak Private Ltd.,
Gomantak Bhavan,
St. Inez, Panaji-Goa

.... Employer/Party-II

Workman/Party-I represented by Adv. Shri A. Sathe.
Employer/Party-II represented by Adv. Shri A. Palekar.

Panaji, Dated: 20-10-2021.

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 17-06-2015, bearing No. 28/31/2015-Lab/595, referred the following dispute for adjudication to the Industrial Tribunal of Goa, at Panaji, Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court, Panaji, Goa in turn assigned the present reference for its adjudication to this Labour Court-II, vide its order dated 17-04-2013.

"(1) Whether the action of the management of M/s. Gomantak Private Limited, Gomantak Bhavan, St. Inez, Panaji, Goa, in refusing employment to it's Workman Shri Maruti B. Raut, Sub-Editor with effect from 01-07-2012, is legal and justified?"

(2) If not, what relief, the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. LC-II-IT/12/2013 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 22-07-2013 at Exb. 7. The facts of the case in brief as pleaded by the Workman are that he was appointed as a 'Sub-Editor' by the Employer/Party-II (for short 'Employer'). He stated that he was deliberately harassed so that he shall resign from the services of the Employer. He stated that the Employer would be able to avoid the payments of various dues and arrears over the years, which the Employer is liable to pay to him.

3. He stated that in the beginning of June, 2012, his salary for the month of May, 2012 for four days was unduly deducted without any reasons. He stated that he therefore, addressed a letter dated 08-06-2012 to the Manager, Mr. Subhash Naik and requested him to provide written clarification regarding deduction in salary for four days from the salary of May, 2012. He stated that the Manager received the said letter and asked him to approach the Executive Editor, Shri Suresh Naik for clarification being his superior boss. He stated that instead of giving details for the deduction of his salary, the Executive Editor threatened him of unpleasant situation. He stated that he was further threatened that he would be transferred and thrown out of Goa if he insist for the clarification.

4. He stated that on 15-06-2012, the Employer issued him a transfer order to Delhi office of the

Sakal Papers Limited revengefully. He stated that when he pointed out that he cannot be transferred to any other Company, the letter was taken back. He stated that after changing the same to Gomantak Delhi office was given to him and he was ordered to report at Delhi office. He stated that the said transfer order did not disclose any address of the Delhi office of the Employer. He stated that the transfer on deputation is nothing but refusal of employment to harass him and the same is illegal, unjustified and bad-in-law. He stated that the said transfer order was made with malicious intentions and to harass him.

5. He stated that he thereafter, approached the Manager and Executive Editor to discuss about the absence of address in the transfer order, but however, did not disclose the address to him. He stated that on 01-07-2012, he went to the office and was highly shocked to see that he was not allowed to enter the office premises by security personnel. He stated that he was told that this is done to follow the orders of the management. He submitted that the Employer has admitted in its reply dated 26-09-2012 that they have no office at Delhi. He stated that the Employer is a company registered in the State of Goa and the daily Sakal is not the company held by the Employer. He submitted that the Employer has relied upon a memorandum of understanding entered between the Employer and the Sakal Paper Limited and has urged that they have agreed to use offices of each other and to make employees of each other to sit in those offices. He submitted that the two companies are having distinct legal entities in law.

6. He stated that the Employer is involved in illegal activities such as marking absent while on duty or on leave, making non-permissible salary deductions without informing the employees. He stated that the management is harassing him over the period of seventeen years since the time he was transferred to its Belgaum office in March, 1997. He stated that he was promised to be promoted as Bureau Chief and work as Bureau Chief, but as he insisted to fulfil the promise, the Employer started his harassment. He stated that he was transferred to the Ponda office of the Employer. He stated that he worked as Bureau Chief, but again promotion was denied to him. He stated that thereafter as a result of computerization, contract between the Employer and its employees, he was asked to work in the Corlim office of the Employer alongwith the editorial staff brought from the Panaji office. He stated that while a vehicle was arranged for the other staff, he was not provided with any such facility nor given travelling/conveyance expenses

which could clearly be described as unfair labour practice. He stated that again all the editorial staff of the Corlim office was brought back in Panaji office, only to add to his woes that he was asked to work in its Panaji office instead of Ponda office. He stated that he was made to suffer by deliberately forcing him to work in very inconvenient duty hours as a result of which his family life was disturbed badly. He stated that to cause him more loss and mental torture, illegal and undue salary cuts were made from his salaries, thereby flouting Payment of Wages Act.

7. He stated that as he stuck to his demands and tried to sustain all the pressures of the management of the Employer, they came out with a new trick to send him to a distant place like Delhi so that he would not be able to follow his demands. He stated that he is demanding the salary and arrears as per the post of Bureau Chief from the date 01-03-1997 which he was promised to be promoted as and worked as. He stated that he was demanding the arrears which he was liable to get towards travelling/conveyance from Ponda-Corlim-Ponda from the time of computerization agreement to 10-07-2005 and from Ponda-Panaji-Ponda from 11-07-2005 onwards. He stated that he is demanding arrears, which the Employer is liable to pay towards the extra hours he had spent in travelling and on inconvenient duty hours, which Executive Editor/management forced him to spend with the intention to harass him. He stated that he is demanding the computer allowance (Rs. 550/- per month) with interest from July, 2002 as he had shifted from Ponda to Corlim only because of computerization agreement. He stated that the alleged transfer order was issued by the person having no authority under law and as such the same is not binding on him. However, under the illegal transfer orders, his services are affected and the Employer is prohibiting him from joining his duty and therefore there is a violation of civil rights and also violation of rights to life guaranteed under the Constitution of India and on this count only the alleged transfer order are liable to be declared as null and void. He stated that the Employer has no jurisdiction and right under law to issue such transfer order and therefore the transfer order is nothing but the illegal ways adopted by the Employer to terminate his services without following the procedure as required under the law. The Workman therefore prayed that the letter issued by the Employer on 15-06-2012 and the documents supplied to him by the Employer before Asstt. Labour Commissioner on 26-09-2012 with their reply may be declared as illegal, not operative and not binding and that the

Employer be directed to allow him to join his duties with continuity in service with immediate effect. He prayed that the Employer be directed to pay to him all the dues of salary, allowances, increments and all the legal dues such as PF, Gratuity, Bonus, LTA, leaves etc. with penalty and cost and that the Employer be directed to pay to him all the dues and arrears towards the wage difference as per the post of Bureau Chief from 01-03-1997, travelling/conveyance for Ponda-Corlim-Ponda (since computerization to 10-07-2005), and for Ponda-Panaji-Ponda (from 11-7-2005 onwards), extra hours forced to spend on travelling and in inconvenient duty hours intended for harassment, overtime and computer allowance. He further prayed that the Employer also be directed to pay to him the amount of Rs. 10,00,000/- (Rupees ten lakhs only) towards the harassment, mental torture and agony, anxiety and loss the Employer caused to him and the sufferings and hardship caused to him alongwith his family members since last year and another Rs. 32,00,000/- (Rupees thirty two lakhs only) on the same count for over the time period of 16 years. He also prayed that the Employer be directed to pay the unduly and illegally deducted salary to him and may direct an investigation to find out the role of Executive Editor and Unit Manager in the entire matter of harassment and initiate appropriate legal action against them. He finally prayed that the Employer be directed not to harass him and any further order to secure the ends of justice.

8. The Employer resisted the claim of the Workman by filing its Written Statement on 07-10-2013 at Exb. 10. The Employer, as and by way of its preliminary objections, submitted that the claim of the Workman is false, frivolous, untenable, bad-in-law and deserves to be dismissed and that the cause of action is manipulated and fabricated. The Employer submitted that there is no illegal and unjustified refusal of employment to the Workman. The Employer submitted that the Workman has failed to join his duties on his transfer on deputation as per the terms and conditions of service of the Workman and as such there is no cause of action to raise the industrial dispute on flimsy and false grounds as it is engaged in the business of newspaper industry and is running its business at different locations on the basis of understanding between allied companies. The Employer submitted that the issue of transfer order does not come under the purview of the Industrial Disputes Act, 1947. The Employer submitted that the Workman has suppressed material facts from this Hon'ble Tribunal and has approached the Tribunal with a false story and has come out with distorted statements. The

Employer submitted that the Workman was duty bound as per the terms and conditions of his appointment, to attend to such other duties as may be assigned to him from time to time by them. The Employer submitted that as per clause 18 of the general terms and conditions of service of the Workman, an employee is liable to be transferred or loaned at their option anywhere in India, in any of the existing or its future establishment including transfer from one shift to another and/or from one department to another. The Employer submitted that the Workman has been transferred to its Gomantak Delhi office and that the Workman ought not to have any grievance about the same as there has not been any change in the service conditions as Workman is entitled to all the benefits. The Employer submitted that non-joining of service by the Workman at the place of transfer is subversive of discipline and is a grave misconduct as the Workman has abandoned his services. The Employer submitted that the Workman is therefore liable for disciplinary action as services and its day to day running has also been affected due to absence of the Workman. The Employer submitted that the relief claimed by the Workman are beyond the scope of the reference and cannot be adjudicated upon by this Hon'ble Tribunal. The Employer submitted that neither the Party I is a 'Workman' as envisaged under the Industrial Disputes Act nor there exist an 'industrial dispute' as defined under the I.D. Act, 1947. The Employer submitted that the matter pertains to transfer of an employee and there is no refusal of employment as alleged. The Employer submitted that the Workman has not joined his services and has abandoned his employment and that the alleged dispute is raised only with an intention to seek illegal benefits.

9. Without prejudice to the above, the Employer stated that it is a company engaged in the business of newspaper industry and is running its business at different locations for which it has understanding with other allied companies, as it is not financially feasible to establish a new office at every place and own the same. The Employer stated that the Workman was appointed as 'trainee Sub-Editor' on 05-11-1992. The Employer stated that the Workman was indulged in various acts which are against the terms of his service and which act amounts to gross misconduct. The Employer stated that the Workman was warned by its superior on several occasions on account of his failure to perform his duties. The Employer stated that neither they have avoided to make the payments of dues and arrears as alleged by the Workman nor they are liable to pay any amounts to the Workman as he was paid as per the

work done by him. The Employer stated that the management has adopted the policy of "no work, no pay" which was known to him.

10. The Employer admitted that vide order dated 15-06-2012, the Employer issued transfer order bearing reference No. HRM/2012 to the Workman. However, it is denied that, according to the said transfer order, the Workman was revengefully transferred to its Gomantak Delhi office of Sakal Papers Limited as alleged by the Workman. The Employer stated that it has the right to transfer its employees from one department to another or from one part of the establishment to another or from one branch to another is incidental to its managerial functions and it is inherent power of the management which has several branches. The Employer submitted that transfer was as per the terms and conditions of service of the Workman. The Employer stated that in any case they were not to take the Workman in confidence as transfer is its managerial and administrative function. The Employer stated that as per the terms and conditions of service of the Workman, more particularly clause 18 states that "TRANSFER: An employee is liable to be transferred or loaned, at the option of the company anywhere in India, in any of the existing or future establishments of the Company in the CHOWGULE GROUP, including transfer from one shift to another and/or from one department to another and that the employees, shall, however, have no right to claim transfer. On transfer to a different establishment or company, the existing total salary of an employee, excluding local and charged allowances etc., will be protected and the terms of conditions of service in all other respects as leave, provident fund, gratuity, bonus, holidays, working hours, deductions etc. will be applicable from time to time in establishments to which the employee is transferred. The seniority of an employee or transfer will be fixed by taking into account his past service in the category". The Employer stated that it is well within the precincts of the said clause and the Workman is bound by same. The Employer stated that the Workman was informed its address of its Delhi office vide letter dated 01-07-2012, but till date the Workman has failed to report to his duties at Gomantak Delhi office and that the said Workman has remained absent from the duties without leave or without any intimation to the management w.e.f. 01-07-2012 till date and as such the Workman has filed the present false case to cover disciplinary action which may commence due to failure of the Workman to join service at Gomantak Delhi office. The Employer stated that the employee was duty bound and in

addition to the duties of the post, to attend to such other duties as may be assigned to him from time to time by his superior, in order to make his services generally useful to them.

11. The Employer stated that neither the designation of the Workman was changed nor remuneration paid was changed or altered. The Employer stated that there was binding memorandum of understanding dated 22-03-2007 between Sakal Papers Ltd. and themselves. The Employer stated that they have agreed to use offices of each other and to make employees of each other to sit in those offices. The Employer admitted that the said two companies are having distinct legal entities in law. The Employer stated that there is a general terms and conditions of service in that clause No. 15 states that Absence – an employee shall not on any pretext, absent himself from duty and/or leave headquarters or his recorded place of residence for purpose of duty without having first obtained permission from proper authorizes or in case of emergency, without intimating to the authorizes concern in the speediest manner, reasons for and period of absence and/or for leaving the head- quarters/residence without prior permission. An employee absenting from duty for three days or more on grounds of sickness or physical disability shall not be permitted to resume duty, except with a certificate of fitness from the company's medical officer. The company may, at its own discretion, ask an employee to produce a fitness certificate from the company's medical officer before reporting for duty in even cases where the sickness or physical disability is less than three days. If an employee is availing medical assistance from the company's medical officer, he shall produce a certificate in proof of sickness from the medical officer, unless sickness occurs at a different place where the employee has gone with prior permission to leave the headquarters, the fitness certificate shall, however, be obtained from the company's medical officer only. An employee absenting from duty, or overstaying leave previously sanctioned for a period of 10 days without intimation in the speediest manner to and permission from the leave sanctioning authority shall lose his employment. The Employer therefore denied that the alleged transfer order are liable to be declared as null and void and that it has not removed the Workman from the work but he has failed to join his duty. The Employer therefore, prayed that an award be passed holding that the reference is not maintainable by disallowing the claims of the Workman.

12. Thereafter, the Workman filed his Re-joinder on 07-10-2013 at Exb. 13. The Workman, by way of his Re-joinder, reiterates and confirms all the submissions and averments made by him in his Claim Statement to be true and correct and denies all the statements and averments made by the Employer in its Written Statement which are contrary and inconsistent with the statements and averments made by him. He submitted that he has been denied employment illegally and unjustifiably on the ground of alleged transfer. He stated that the alleged transfer was for one year from 01-07-2012 to 30-06-2013 and after the said period he filed the joining application, however, he was not permitted to join his duties and there is wilful refusal of employment. He submitted that the said unfair transfer order was issued with an intension to avoid payment of various dues and arrears that the Employer is liable to pay him and to take revenge against him.

13. Based on the pleadings filed by the respective parties hereinabove, this Court framed the following issues on 18-10-2013 at Exb. 14.

1. Whether the Employer proves that there does not exist an 'industrial dispute' within the meaning of Section 2 (k) of the Industrial Disputes Act, 1947?
2. Whether the Employer proves that the present order of reference is not maintainable in view of allegations made in para a, b, c, d, e, f, g and h of the Written Statement?
3. Whether the Party I proves that he is a 'Workman' within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947?
4. Whether the Party I proves that the action of the management of the Employer in refusing him employment with effect from 01-07-2012 is illegal and unjustified?
5. Whether the Workman is entitled to any relief?
6. What Order? What Award?

14. My answers to the aforesaid issues are as under:

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| (a) Issue No. 1 | : | In the negative. |
| (b) Issue No. 2 | : | In the negative. |
| (c) Issue No. 3 | : | In the affirmative. |
| (d) Issue No. 4 | : | In the affirmative. |
| (e) Issue No. 5 and 6 | : | As per final order. |

I have heard the oral arguments of Ld. Adv. Shri A. Sathe, appearing for the Workman as well as Ld. Adv. Shri Amit Palekar appearing for the Employer. The Workman also filed its synopsis of written arguments.

15. Ld. Adv. Shri A. Sathe, appearing for the Workman submitted that the Employer is a newspaper industry having its office at St. Inez, Panaji-Goa. He submitted that the Workman was appointed as 'Sub-Editor' by the Employer in the year 1992. He submitted that the Workman was deliberately harassed by the Employer so that he shall resign from the services of the Employer. He submitted that four days salary for the month of May, 2012 was illegally deducted by the Employer. He submitted that when the Workman sought clarification, he was threatened of unpleasant situation. He submitted that the Workman was issued a transfer on deputation, vide order dated 15-06-2012 transferring his services at Sakal Papers Ltd. He submitted that the said transfer order on deputation to Sakal Papers have been issued to him to harass him with oblique and malafide motive. He submitted that the Employer does not have its own office at New Delhi nor they could transfer him to New Delhi. He submitted that the said transfer on deputation order issued to the Workman is illegal, unjustified and bad-in-law as the Workman did not consent for the same. He submitted that as the Workman protested the said transfer on deputation order, he was refused the employment w.e.f. 01-07-2012. He submitted that the said refusal of employment to the Workman by the Employer w.e.f. 01-07-2012 is illegal, unjustified and bad-in-law and amounts to illegal retrenchment of services of the Workman. He submitted that the Employer challenged the present reference on the ground that the Party I is not a 'Workman' as defined u/s 2 (s) of the I.D. Act, 1947 and that the present dispute raised by him is not an 'industrial dispute' as defined u/s 2 (k) of the I.D. Act, 1947. He submitted that at the time of refusal of employment, he was designated as 'Sub-Editor' in the Newspaper industry of the Employer. He submitted that section 2 (f) of the Working Journalist and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 defines the term Working Journalist which includes the Sub-Editor. He submitted that as per Section 3 of the said Act the Industrial Disputes Act, 1947 is applicable to Working Journalists. He submitted that he is therefore a Workman as defined u/s. 2 (s) of the I.D. Act, 1947 and that the present dispute raised by him against the Employer pertaining to his non-employment w.e.f. 01-07-2012 is an 'industrial dispute' within the meaning of Section 2 (k) of the I.D. Act, 1947 and as such this Court has every jurisdiction to adjudicate the present reference, referred by the Appropriate Government. He submitted that the Workman is unemployed from

the date of his illegal refusal from service w.e.f. 01-07-2012 till date. He submitted that the Workman is therefore entitled for reinstatement with full back wages and consequential benefits thereof. He submitted that the Workman is also entitled for compensation of Rs. 10,00,000/- towards the harassment, mental torture and sufferings caused to him and Rs. 32,00,000/- on the same count over the time period of 16 years. He submitted that the Workman is also entitled for his unduly and illegally deducted salary and direct an investigation to find out the role of the Executive Editor and Unit Manager in the entire matter of harassment and appropriate legal action against them. In support of his oral contentions, he relied upon two judgments of Hon'ble Apex Court, one in the case of **Kendriya Vidyalaya Sangathan & Anr. v/s. S.C. Sharma reported in 2005 (104) FLR 863**, and another in the case of **Jabir Singh v/s. Haryana State Agriculture Marketing Board and Anr., reported in 2009 III CLR pg. 628**.

16. Per contra, Ld. Adv. Shri Amit Palekar, representing the Employer, during the course of his oral arguments, submitted that the Employer is engaged in the business of Newspaper Industry having its office at St. Inez, Panaji-Goa. He submitted that the Employer is running its business at different locations on the basis of understanding between Allied Companies. He submitted that the Employer is having its offices in the State of Goa. He submitted that the Party I was appointed as 'Trainee Sub-Editor' on 05-11-1992. He submitted that the Party I is indulged in various acts which are against the terms of his service and which acts amounts to misconducts. He submitted that the Party I was warned by its superior on several occasions on account of his failure to perform his duties. He submitted that neither the Party I is a 'Workman' as defined u/s 2 (s) of the I.D. Act, 1947 nor the present dispute raised by him is an 'industrial dispute' within the meaning of Section 2 (k) of the I.D. Act, 1947. He submitted that the Employer has signed an MOU on 22-03-2007 with Sakal Papers Ltd. He submitted that by the said MOU, they have agreed to use offices of each other and to make employees of each other to sit in those offices. He submitted that the Party I was duty bound as per the terms and conditions of his appointment, to attend to such other duties as may be assigned to him by them. He submitted that the Party I has signed the general terms and conditions of service at the time of his appointment. He submitted that as per clause 18 of the said general terms and conditions of service, the Party I is liable to be transferred or loaned at their option anywhere in India, in any of

the existing or its future establishment including transfer from one shift to another and/or from one department to another. He submitted that the Party I has been transferred to its Gomantak Delhi office and the Party I ought not to have any grievance about the same as there has not been any change in the service conditions as he is entitled to all the benefits. He submitted that the non-joining of service by the Party I at the place of transfer is subversive of discipline and is a grave misconduct as the Party I has abandoned his services. He submitted that the transfer order issued to the Party I was as per his service conditions and it is a managerial and administrative function. He submitted that the transfer order issued to the Party I is well within the precincts of the said clause 18 and the Workman is bound by the same. He submitted that the Party I was informed by its Delhi office vide letter dated 01-07-2012 but till date the Party I has failed to report to his duty as Gomantak Delhi office. He submitted that the Party I has remained absent from duty without leave or without any intimation to the management w.e.f. 01-07-2012 till date and as such the Party I has filed the present false case to cover disciplinary action which may commence due to failure to join service at Gomantak Delhi office. He submitted that the transfer order issued to the Party I is just, fair and proper. He submitted that there is no illegal refusal of employment to the Party I w.e.f. 01-07-2012 or any other date. He therefore, prayed that the present reference be dismissed with cost.

I have carefully perused the entire records of the present case including the synopsis of written arguments filed by the Workman. I have also carefully considered the submissions made across the bar by the Ld. Advocates appearing for the respective parties and is of the opinion as under:

REASONS

Issue No. 3:

I am deciding the issue No. 3 prior to the issue No. 1 and 2 as the issue No. 3 goes to the very root jurisdiction of this Court.

17. The Employer, as and by way of its preliminary objections, submitted that the Party I is not a 'Workman' within the meaning of Section 2 (s) of the I.D. Act, 1947. The Party I is therefore required to prove that he falls within the meaning of section 2 (s) of the I.D. Act, 1947. Section 2(s) of the I.D. Act, 1947 which defines the term "Workman" and it reads as under:

"Section 2 (s), "Workman" means any person (including an apprentice) employed in any industry

to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purposes of any proceedings under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or a consequence of that dispute or dismissal, discharge or retrenchment has laid to that dispute, but does not include any such person:

- (1) *who is subject to the AIR Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or*
- (2) *who is employed in the police service or as an Officer or other employee of a prison or*
- (3) *who is employed mainly in a managerial or administrative capacity*
- (4) *who, being employed in a supervisory capacity draws wages exceeding Rs. 1,600/- per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."*

Thus, the 'Workman' means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. It is now a well settled principle of law that whether a person concerned is a 'Workman' or not within the meaning of Section 2(s) of the I.D. Act, 1947, depends upon the predominant nature of duties and responsibilities performed by him at the time of termination of his services.

18. In the case in hand, the Party I was designated as 'Sub-Editor' at the time of refusal of his employment w.e.f. 01-07-2012. As per the Wage Board Recommendations constituted under the Working Journalist and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Exb. 81), the post of the Party I i.e. 'Sub-Editor' comes under group V. The said Wage Board Recommendations defines the job of Sub-Editor as "Sub-Editor or Sr. Reporter means a person who receives, selects, shortens, summarizes, elaborates, translates, edits and headlines news items of all descriptions and may do some or all of these functions. The sole witness of the Employer, Shri Dayanand Prabhugaonkar, its Unit Manager in his cross-examination admitted that the Bureau Chief is a senior post to that of Sub-Editor. The said sole witness of the Employer has not stated in his

affidavit in evidence that the Party I is not a 'Workman' as defined u/s 2 (s) of the I.D. Act, 1947 nor put suggestions to the Workman to that effect. Thus, the predominant duties and responsibilities as Sub-Editor is clerical in nature.

19. Even otherwise, undisputedly, the Employer is engaged in the business of Newspaper Industry. The Party I was employed as Sub-Editor at the time of termination of his employment. The Employer and the Party I is governed by the Working Journalist and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, hereinafter referred to as the said Act. The term "Working Journalist" has been defined u/s 2 (f) of the said Act and it reads as under:

'Working Journalist' means a person whose principle avocation is that of a journalist and [who is employed as such, either whole-time or part-time, in relation to, one or more newspaper establishments], and includes an editor, a leader-writer, news-editor, Sub-Editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news photographer and proof-reader, but does not include any such person who:-

- (i) *is employed mainly in managerial or administrative capacity, or*
- (ii) *being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature;*

20. Similarly, Section 3 of the said Act provides for applications for provisions of I.D. Act, 1947 and it reads as under:

S. 3 Act of 1947 to apply to working Journalist:

- (1) *The provisions of the Industrial Disputes Act, 1947, as in force for the time being, shall, subject to the modification specified in sub-section (2), apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act.*
- (2) *Section 25F of the aforesaid Act, in its application to working journalists, shall be construed as if in clause (a) thereof, for the period of notice referred to therein in relation to the retrenchment of a Workman, the following periods of notice in relation to the retrenchment of a working journalist had been substituted, namely:-*
 - (a) *six months, in the case of an editor, and*
 - (b) *three months, in the case of any other working journalist.*

21. The Party I, being designated as Sub-Editor at the time of refusal of his employment is a working journalist as per the said Act and that the provisions of I.D. Act, 1947 as in force for the time being, shall, subject to the modification specified in sub-section (2), apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act. Hence, it is held that the Party I being Sub-Editor was performing the clerical duties and as such he is a 'Workman' within the meaning of Section 2 (s) of the I.D. Act, 1947. The issue No. 3 is therefore, answered in the affirmative.

Issue No. 1:

22. The Employer, as and by way of its preliminary objections, submitted that there is no 'industrial dispute' as envisaged u/s 2 (k) of the I.D. Act and as such the reference is not maintainable. The burden to prove the aforesaid allegation is therefore on the Employer.

While deciding the issue No. 3 hereinabove, I have discussed and come to the conclusion that the Party I is a 'Workman' within the meaning of Section 2 (s) of the I.D. Act, 1947.

23. The term 'industrial dispute' has been defined u/s 2 (k) of the I.D. Act, 1947 and it means "any dispute or difference between Employers and Employers, or between Employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons."

Thus, any dispute or difference between the Employer and Employer, or between the Employer and its workmen, or between the Workman and Workman which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons.

24. In the instant case, the Party I is a 'Workman' as defined u/s 2 (s) of the I.D. Act, 1947. It is not in dispute that the Party II is an Employer as defined u/s 2 (g) of the I.D. Act, 1947 and as such the present dispute raised by the Workman against the Employer pertaining to his non-employment w.e.f. 01-07-2012 is an 'industrial dispute' within the meaning of section 2 (k) of the I.D. Act, 1947 and as such this Court has every jurisdiction to adjudicate the present reference issued by the Government of Goa. Hence, it is held that the Employer failed to prove that there does not exist an industrial dispute within the meaning of Section 2 (k) of the I.D. Act, 1947. The issue No. 1 is therefore answered in the negative.

Issue No. 4:

I am deciding the issue No. 4 prior to the issue No. 2, as the answer to the said issue No. 4 are relevant to the issue No. 2.

25. The Workman alleged that he has been illegally refused employment by the Employer w.e.f. 01-07-2012. The burden to prove the said fact is on him.

26. The evidence on record indicates that the services of the Workman were transferred on deputation by the Employer to Delhi initially for 12 months i.e. up to 30-06-2013, vide its transfer order dated 15-06-2012 at Exb. 49. By the said transfer order at Exb. 49, the Workman was instructed to report to Executive Editor and that as per the need of the organization, he has to report and interact with other key officers, seniors, peers at various levels in the organization for achieving the organizational goals. The Workman replied to the said letter of the Employer, vide its letter dated 26-06-2012 at Exb. 50. By the said letter at Exb. 50, the Workman showed his inability to join his posting at New Delhi. Vide its letter dated 30-06-2012 (Exb. 51), the Employer brought to the notice of the Workman, clause No. 18 of his appointment letter, which states that "you are liable to be transferred or loaned, at the option of the company anywhere in India, in any of the existing or future establishment of the Company, including transfer from one shift to another and or from one department to another". The Workman was further informed by the Employer that in exercise of the said clause, they have effected the transfer order to Delhi office and therefore, there was no question of exercising any option by the Workman and he was required to abide by the orders/instructions as per letter dated 15-06-2012 at Exb. 49. Vide his letter dated 03-07-2012 at Exb. 54-colly, the Workman informed the Employer that initially, he was issued a letter stating that the management has decided to depute his services at Sakal Delhi office and that when he told the Employer that cannot be transferred to Sakal Delhi office, the said letter was taken back and after changing the same, he was issued a letter deputing his services at Gomantak Delhi office. By the said letter, the Workman requested the Employer to supply all the documents to him pertaining to which the said deputation offer letter has been issued to him to enable him to exercise his option either to accept the said offer of deputation for better prospects or not. The evidence on record indicates that neither the Employer have its own office at Delhi nor produced on record any document to substantiate its plea that the Employer

has signed MOU dated 22-03-2007 with the Sakal Group of Companies to use its office by each other and to make employees of each other to sit in those offices. The sole witness of the Employer Shri Prabhugaonkar in his cross-examination admits that there is no proper address of the Delhi office of the Employer in the letter of transfer of deputation issued to the Workman at Exb. 49. The evidence on record indicates that the Employer i.e. Gomantak Private Limited and Sakal Group of Companies are two distinct and separate entities in the eyes of law and they have not amalgamated with each other.

27. The Workman was issued an appointment letter dated nil which is on record at Exb. 75. Clause 18 of the said appointment letter at Exb. 75 pertains to the transfer and it reads as under:

"18. TRANSFER: An employee is liable to be transferred or loaned at their option anywhere in India, in any of the existing or its future establishment including transfer from one shift to another and/or from one department to another. The employee, shall, however, have no right to claim transfer."

The term 'transfer' and 'transfer on deputation' are two different terms and have different meanings.

28. In the case of **State of Punjab and Ors. v/s. Inder Singh and Ors, reported in 1997 (8) SCC 372**, the Hon'ble Supreme Court in para 18 of its judgment held as under:

"18. The concept of 'deputation' is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments

which we have referred to above. There is no escape for respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be".

29. In the case of **Prasar Bharti and Ors., v/s. Amarjeet Singh and Ors, reported in JT 2007 (3) SC 89**, the Hon'ble Supreme Court of India observed as under:

19. There exists a distinction between "transfer" and "deputation". "Deputation" connotes service outside the cadre or outside the parent department in which an employee is serving. "Transfer", however, is limited to equivalent post in the same cadre and in the same department. Whereas deputation would be a temporary phenomenon, transfer being antithesis must exhibit the opposite indications."

30. In the case of **Abdul Aziz K. v/s. The Managing Director, KSRTC Bangalore** of Hon'ble High Court of Karnataka observed as under:

"Transfer on deputation from one corporation to another amounts to change of Employer. Such being the position, transfer on deputation cannot be compelled on an employee of a corporation or cannot be effected without his/her consent".

31. In the case of **Umapaty Choudhari v/s. State of Bihar and Anr, reported in (1999) 4 SCC 659**, the Hon'ble Supreme Court observed as under:

"Deputation can be appropriately defined as an assignment of the deputations (another word for an employee) than one office or department. More known as the lending authority or parent body, to a different organisation on department also commonly known as borrowing authority. The importance of deployment by deputation is recognised in the interest of the public to meet the predicament of the public service. Deputation as a concept is one that is of a consensual nature, which requires the decision of a voluntarily nature of an Employer to lend the services of the officer working under him, and there must be an acceptance that follows voluntarily by the Employer who is borrowing such service. The officer must also have given his consent to proceed with such deputation or not".

Thus, it is crystal clear that the term 'transfer' is altogether different than the 'transfer on deputation'. The transfer is normally a managerial and administrative function and it does not require the consent of an employee. On the contrary, the term 'transfer on deputation' is normally to a different organization/Employer and it requires the acceptance or consent of the employee.

32. In the instant case, the Workman signed the general terms and conditions of service at Exb. 75 at the time of joining in the services of the Employer. As per the said general terms and conditions of service at Exb. 75, there exists a clause No. 18 for transfer. The said general terms and conditions of service signed by the Workman at Exb. 75 does not contain any provisions for 'transfer on deputation'. As stated hereinabove, the term 'transfer' and 'transfer on deputation' have two different meanings in service law. The former can be effected without consent within the same cadre and same department. Whereas the later can be effected with the consent of the employee outside the cadre and out of the present department. The sole witness of the Employer, Mr. Prabhugaonkar admits that the Employer does not have its own office in Delhi and that the property known as 5/15, INS Building, Rafi Marg, New Delhi belongs to Sakal Group of Companies. The Employer also failed to produce on record alleged MOU dated 22-03-2007, which Sakal Group of Companies to use its office by each other and to make employees of each other to sit in those offices. The said transfer clause is also not applicable to the case in hand in view of the explanation given hereinabove. As the Workman was issued a letter of transfer on deputation, he has every right either to accept or reject the said offer of deputation made to him. The Employer had not obtained the consent of the Workman before issuing the transfer on deputation on 15-06-2012 at Exb. 49. The said transfer on deputation of the Workman deputing his services at Delhi office at Exb. 49 is illegal, unjustified and non-est in the eyes of law.

33. By email dated 01-07-2012 at Exb. 52, the Workman informed the Employer that when he went to resume his duty at the Employer's office at Panaji on 01-07-2012, he was illegally stopped from entering the office and resuming his duties by security personnel. Vide his letter dated 02-07-2012 at Exb. 53, the Workman also informed the Employer about illegal refusal to him w.e.f. 01-07-2012. The sole witness of the Employer admits that the Workman, vide its letter dated 01-07-2013 (Exb. 58-colly), requested the Employer to accommodate him in its Panaji office and that the Employer, vide its letter dated 02-07-2013 instructed the Workman that he may report for duty at Delhi office where he has been transferred on deputation despite of lapse of period.

34. The evidence on record indicates that the Workman was refused the employment w.e.f. 01-07-2012, when he had gone to resume his duty on the same day. The said refusal of employment to

the Workman by the Employer w.e.f. 01-07-2012 is illegal and unjustified as the same was issued without the consent of the Workman. The said illegal refusal of employment to the Workman amounts to termination of services of the Workman by way of illegal retrenchment. There is nothing on record to show that the Employer had complied with Section 25-F of the I.D. Act, 1947 or Section 3 (2) of the said Act. Hence, it is held that the Workman proves that the action of the management of the Employer in refusing the employment w.e.f. 01-07-2012 is illegal and unjustified. The issue No. 4 is therefore answered in the affirmative.

Issue No. 2:

35. The Employer, as and by way of its preliminary objections, submitted that the present order of reference is not maintainable as the claim of the Workman is false, frivolous untenable, bad-in-law and deserves to be dismissed, that there is no cause of action for the Workman to file the present claim and that the cause of action is manipulated and fabricated, that there is no illegal and unjustified refusal of employment to the Workman, that the Workman has failed to join his duties on his transfer on deputation as per the terms and conditions of service of the Workman and as such there is no cause of action to raise the industrial dispute on flimsy and false grounds as it is engaged in the business of newspaper industry and is running its business at different locations on the basis of understanding between allied companies, that the issue of transfer order does not come under the purview of the Industrial Disputes Act, 1947, that the Workman has suppressed material facts from this Hon'ble Tribunal and has approached the Tribunal with a false story and has come out with distorted statements, that the Workman was duty bound as per the terms and conditions of his appointment, to attend to such other duties as may be assigned to him from time to time by them and that as per the general terms and conditions of service of the Workman as per clause 18, an employee is liable to be transferred or loaned at their option anywhere in India, in any of the existing or its future establishment including transfer from one shift to another and/or from one department to another and that the Workman has been transferred to its Gomantak Delhi office and the Workman ought not to have any grievance about the same as there has not been any change in the service conditions as Workman is entitled to all the benefits, that non-joining of service by the Workman at the place of transfer is subversive of discipline and is a grave misconduct as the Workman has abandoned his services, that the Workman is therefore liable for

disciplinary action in services and its day to day running has also been affected due to absence of the Workman, that the relief claimed by the Workman are beyond the scope of the reference and cannot be adjudicated upon by this Hon'ble Tribunal, that the Party I is not a 'Workman' as envisaged under the Industrial Disputes Act and that there is no 'industrial dispute', that the matter pertains to transfer of an employee and there is no refusal of employment as alleged, that the Workman has not joined his services and has abandoned his employment and that the alleged dispute is raised only with an intention to seek illegal benefits.

36. While deciding the issue No. 3 hereinabove, I have discussed and come to the conclusion that the Party I is a 'Workman' within the meaning of Section 2 (s) of the I.D. Act, 1947. Similarly, while deciding the issue No. 1, hereinabove, I have discussed and come to the conclusion that the present dispute raised by the Workman is an 'industrial dispute' within the meaning of Section 2 (k) of the I.D. Act, 1947. While deciding the issue No. 4 hereinabove, I have also discussed and come to the conclusion that the action of the management of the Employer in refusing the employment to the Workman w.e.f. 01-07-2012 is illegal and unjustified. In view of above, I do not find any merits in any of the preliminary objections raised by the Employer in its Written Statement filed in the present proceedings. Hence, it is held that the Employer failed to prove that the present order of reference is not maintainable in view of allegations made in para a, b, c, d, e, f, g and h of the Written Statement. The issue No. 2 is therefore answered in the negative.

Issue No. 5:

37. While deciding the issue No. 4 hereinabove, I have discussed and come to the conclusion that the Workman proved that the action of the management of the Employer in refusing the employment w.e.f. 01-07-2012 is illegal and unjustified.

Ld. Adv. Shri Sathe submitted that the services of the Workman has been illegally retrenched and therefore he is entitled for reinstatement in service with full back wages and consequential benefits thereof and relied upon the following two judgments of Hon'ble Apex Court.

38. In the case of **Kendriya Vidyalaya Sanghathan & Ors V/s S. C. Sharma** reported in 2005 – L.L.R. – 275 (S. C.), the Hon'ble Supreme Court has held that held that "*where the Employee has not shown that he was not gainfully employed during the period of operation of the termination order. Has also neither*

pleaded nor placed any material in that regard he would not be entitled for back wages. For entitlement of back wages on reinstatement of an employee, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the Employer can bring on record materials to rebut the claim."

39. In the case of **Jabir Singh v/s. Haryana State Agriculture Marketing Board and Anr.**, reported in 2009 III CLR pg. 628 of the Hon'ble Supreme Court of India, it has held that "*it is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice*".

40. In the recent case of **Deepali Gundu Surwase v/s. Kranti Junior Vidhyalaya**, reported in (2013) 10 SCC 324, the Hon'ble Supreme Court of India, in para 22 of its judgment held as under:

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the Employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These suffering continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the Employer is ultra vires the relevant statutory

provisions or the principles of natural justice, entitles the employee to claim full back wages. If the Employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the Employer would amount to indirectly punishing the concerned employee and rewarding the Employer by relieving him of the obligation to pay back wages including the emoluments."

41. The principle laid down by the Hon'ble Apex Court in its aforesaid judgments is well settled and binds a precedent upon me. In the case in hand, the evidence on record indicates that the age of the Workman is 52 years. The Workman pleaded and stated on oath that he is unemployed from the date of his illegal refusal of service. The Workman is therefore directed to be reinstated in service with full back wages and consequential benefits thereof. The Workman also prayed for other reliefs such as other dues and arrears, compensation of Rs. 10 lakhs towards harassment, mental torture etc., Rs. 32 lakhs towards harassment, illegal deductions etc., which are beyond the scope of the terms of reference and as such the Workman is not entitled for the same.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of the management of M/s. Gomantak Private Limited, Gomantak Bhavan, St. Inez, Panaji, Goa, in refusing employment to its Workman Shri Maruti B. Raut, Sub-Editor with effect from 01-07-2012, is illegal and unjustified.
2. It is held that M/s. Gomantak Private Limited, Gomantak Bhavan, St. Inez, Panaji, Goa, is hereby directed to reinstate the Workman, Shri Maruti B. Raut, Sub-Editor, alongwith full back wages and consequential benefits thereof.
3. No order as to costs.

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/2/2021-LAB/Part-IV/574

The following Award passed by the Labour Court-II, at Panaji-Goa on 08-11-2021 in Case No. Ref. LC-II/IT/17/2018 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 19th November, 2021.

THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. LC-II/IT/17/2018

Shri Pascoal Soares,
R/o. H. No. 4/189-A,
Agar Vaddo, Calangute,
Bardez-Goa Workman/Party-I
V/s

The Secretary,
Village Panchayat of Calangute,
Calangute, Bardez-Goa Employer/Party-II
Workman/Party-I represented by Adv. Shri Pronoy
Kamat.

Employer/Party-II represented by Adv. Shri S.P.
Patkar.

Panaji, Dated: 08-11-2021.

AWARD

1. In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 10-09-2018, bearing No. 28-21-2018-LAB/616 referred the following dispute for adjudication to this Labour Court, Panaji, Goa.

"(1) Whether the severance of Employer-Employee relationship between the Village Panchayat of Calangute and Shri Pascoal A. Soares, Head of the Demolition Squad and in-charge of the Cattle Pound, with effect from 31-08-2017, amounts to termination of services or retirement on superannuation?

(2) If so, what relief the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. LC-II/IT/17/18 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 05-12-2018 at Exb. 6. The facts of the case in brief as pleaded by the Workman are that he was employed by the Employer/Party II (for short, 'Employer') as 'Head of the Demolition Squad' from 16-02-2006 on payment of monthly salary of Rs. 10,000/-. He stated that his services had been illegally terminated by the Employer in the year 2007. He stated that he, therefore, raised an industrial dispute which was ended in failure. He stated that in the said proceedings, the Employer admitted its mistakes and settled the said dispute. He stated that accordingly, an award dated 09-07-2008 was passed by the Hon'ble Industrial Tribunal.

3. He stated that he was continuously working with the Employer. He stated that however, suddenly after change of Panchayat body in June, 2017, the new Panchayat body issued him a show-cause notice dated 31-07-2017. He stated that it was alleged that a complaint was filed by one, Mr. Sunil Kavlekar against him and he was asked to reply to the same. He stated that since a copy of the complaint was not furnished to him, he requested the Employer to give him a copy of the said complaint by his letter dated 04-08-2017. He stated that the said complaint allegedly filed by Mr. Sunil Kavlekar is fake as no person by the said name exist in Calangute. He stated that without considering his request, the Employer issued an order dated 31-08-2017 thereby terminating his services. He stated that in the said order, it is mentioned that his services are terminated considering existing staff available in the Panchayat and that his reply is unsatisfactory. Aggrieved by the decision of the Employer in illegally terminating his services, he raised an industrial dispute before the Asstt. Labour Commissioner which ended in failure.

4. He contended that his termination of services is illegal and against the provision of law. He submitted that the reasons given by the Employer are false and that he was not given opportunity to file reply. He submitted that the award dated 09-07-2008 under which settlement is arrived has not been considered by the Employer. He submitted that the termination of his services have caused irreparable loss and prejudice. He submitted that the termination order is malafide and stigmatic. He submitted that the Employer had already appointed Mr. Salis Fernandes on the post held by him and

there was no approval obtained u/s 115 of the Goa Panchayat Raj Act. He submitted that the resolution as well as show-cause notice issued to him does not mention the said section. He submitted that the Employer has not given valid reasons in terminating his services and has taken a different stand before the conciliation proceedings held before the Asstt. Labour Commissioner. He submitted that the reasons sought to be now given by the Employer for the termination of his services are illegal. He submitted that the Employer violated the principles of natural justice in terminating his services and as such the termination of his services are arbitrary, illegal and malafide. The Workman therefore, prayed that the Employer be directed to reinstate him in service with full back wages.

5. The Employer resisted the claim of the Workman by filing its written statement dated 06-02-2019 at Exb. 9. The Employer, as and by way of its preliminary objections, submitted that the Party I do not come within the purview of industrial disputes Act, that the Workman was born on 17-05-1945 (73 years) old and as such his appointment at the age of 61 years on 16-02-2006 is illegal and in violation of the basic guidelines laid down by the order of the Government, that as the appointment order of the Party I, being illegal, no right is created in him and the present proceedings is required to be dismissed. Without prejudice to its aforesaid contention, the Employer submitted that the appointment order of the Party I was not approved by the order of the Government. The Employer stated that as the appointment order of the Party I is to the non-existing post, he has no right to raise any claim and the same is required to be rejected, that the order passed by the Employer by invoking Section 115 (3) of the Goa Panchayat Raj Act, 1994 and Section 115 (4) of the said Act provides for appeal and as such the present claim is not maintainable. The Employer submitted that the present claim of the Party I is intending to make back door entry, which is legally prohibited and that by approaching this Hon'ble Court, the Party I cannot obtain any order which is not legally maintainable by suppressing his age in the claim petition.

6. Without prejudice to its aforesaid contention, the Employer stated that neither the Party I is a 'Workman' nor it is an 'Employer' for the reasons stated in the foregoing paragraph. The Employer submitted that the settlement which is illegal and bad-in-law, does not create any right in either of the party. The Employer stated that in fact, the previous Panchayat body has acted illegally and contrary to law, being hand in gloves with the Party I.

The Employer stated that now the Party I cannot blame the present Panchayat body for acting within purview of law. The Employer submitted that the Party I did not file any reply after giving him required opportunity as he was aware that he has no right to continue in service. The Employer stated that the Party I was appointed without following any procedure of law and the basic guidelines laid down by the order of the Government. The Employer stated that the illegal appointment of the Party I has resulted into payment of ex-chequers money, who is not entitled either for appointment or for receiving any money. The Employer stated that it is a public body and cannot make such payments for illegal appointments. The Employer stated that they are entitled to recover the same from the Party I. The Employer submitted that this Hon'ble Court has no jurisdiction and as such further question of conducting enquiry or leading evidence does not arise. The Employer denied the overall case as pleaded by the Party I and prayed for dismissal of the claim of the Party I.

7. Thereafter, the Workman filed his rejoinder on 07-03-2019 at Exb. 10. The Workman, by way of his re-joinder, confirms and reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in its written statement, which are contrary to the statements and averments made by him.

8. Based on the pleadings filed by the respective Parties, this Hon'ble Labour Court II has framed the following issues on 26-03-2019 at Exb. 11.

1. Whether the Workman/Party I proves that the action of the Employer in severance of Employer employee relationship between the Employer and himself w.e.f. 31-08-2017 amounts to termination of services or retirement on superannuation?
2. Whether the Workman/Party I proves that the action of the Employer in terminating his services w.e.f. 31-08-2017 is illegal and unjustified?
3. Whether the Employer/Party II proves that the reference is not maintainable in view of the preliminary objections raised in para (1) to (7) of the written statement?
4. Whether the Workman is entitled for any relief?
5. What Order? What Award?
9. Thereafter, the Party I filed his affidavit in

evidence and case was fixed for further examination-in-chief as well as cross-examination of the Party I. On 24-09-2021, Ld. Adv. Ms. P. Gawandi as well as Ld. Adv. Shri P. Naik appeared for the Workman and the Employer respectively. Both the representatives orally submitted that they are trying to settle the matter amicably and sought time. Accordingly, on 08-11-2021 Ld. Adv. Ms. P. Gawandi as well as Ld. Adv. Shri S. Patkar appeared for the Workman and the Employer respectively and submitted that they have settled the matter amicably between the parties hereinabove and prayed for disposing off the reference as consent award. The parties have produced on record a copy of the terms of settlement duly signed by both the parties along with their respective representatives which is on record at Exb. 19. The terms of settlement as settled between the parties are reproduced herewith.

- (a) The Party No. I and Party No. II has arrived at amicable settlement and Party No. I has decided to withdraw the suit based on the said amicable settlement.
- (b) The Party No. I has approached Party No. II to consider his case on ground of compassion as he is old and is unable to carry out any work, however, he has to look after himself and his family.
- (c) The Party No. II, has considered the said request made by the Party No. I in the meeting held on 13-10-2021 vide Resolution No. IX J (80) and has resolved that the Party No. II shall pay the Party No. I a sum of Rs. 2,00,000/- (Rupees Two lakhs only) on ground of compassion subject to the condition that the Party No. I shall withdraw the present case and shall not file any further case on Party No. II for reinstatement and/or wages. The copy of resolution is annexed as "Annexure A".
- (d) The Party No. I has decided to accept said sum of Rs. 2,00,000/- (Rupees Two lakhs only) and has decided to withdraw the present case and undertakes that he shall not file any case for reinstatement and/or wages. The copy of the cheque is annexed as "Annexure B".
- (e) Both the parties declared that they have arrived at amicable settlement based on free will without any force or coercion.
- (f) The present consent terms are full and final and no party is entitled to open the same on any ground whatsoever.

I have carefully perused the said terms of

settlement at Exb. 19 signed by and between the parties hereinabove. The said terms of settlement are beneficial to both the parties. Hence, I consented for the same. Since the dispute under reference is settled between the parties, I hold that the dispute under present reference does not survive.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the reference as to whether the severance of Employer-Employee relationship between the Village Panchayat of Calangute and Shri Pascoal A. Soares, Head of the Demolition Squad and in-charge of the Cattle Pound, with effect from 31-08-2017, amounts to termination of services or retirement on superannuation, does not survive.
2. In view of settlement arrived at between the parties hereinabove, Shri Pascoal Soares is granted the amount of Rs. 2,00,000/- towards full and final settlement of his claim.
3. No order as to costs.

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar)
Presiding Officer,
Labour Court.

Notification

No. 28/2/2021-LAB/Part-II/575

The following Award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 08-11-2021 in Ref. No. IT/55/2016 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 19th November, 2021.

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT

GOVERNMENT OF GOA

AT PANAJI

(Before **Ms. Bela N. Naik, Hon'ble Presiding Officer**)

Ref. No. IT/55/2016

Workmen,
Rep. by the President,
Cidade-de-Goa Hotel Employees Union,
C/o Hotel Cidade de Goa,
Vaiguinim Beach,
Dona Paula-Goa ... Workmen/Party I

V/s

1. The General Manager,
M/s. Hotel Cidade de Goa,
Vaiguinim Beach,
Dona Paula-Goa ... Employer/Party II(1)

2. M/s. Indian Hotels Company Ltd.,
Vaiguinim Beach,
Dona Paula-Goa ... Party II(2)
Workmen/Party I represented by Ld. Rep. Shri P. Gaonkar.

Employer/Party II(1) represented by Ld. Adv. Shri G. K. Sardesai along with Adv. Ms. N. Gaonkar.

Party II(2) is represented by Ld. Adv. P. J. Kamat.

AWARD

(Delivered on this the 8th day of the month of November of the year 2021)

By Order dated 11-11-2016, bearing No. 28/2/2016-LAB/797, the Government of Goa in exercise of powers conferred by Section 10(1)(d) of the Industrial Disputes Act, 1947 (for short 'The Act'), has referred the following dispute to this Tribunal for adjudication.

"Whether the action of the management of M/s. Hotel Cidade de Goa, Vaiguinim Beach, Goa in not conceding the following demands raised by the Cidade de Goa Hotel Employees' Union, vide their letter dated 26-06-2012, is legal and justified?"

CHARTER OF DEMANDS

Demand No. 1: Pay Scales:

Grades:

- I - 3500-100-4000-110-4550-120-5150-130-5800-240-6500-150-7250- 160-8050.
- II - 3650-110-4200-120-4800-130-5450-140-6150-150-6900-160-7700-170-8550.
- III - 3800-120-4400-130-5050-140-5750-150-6500-160-7300-170-8150-180-9050.
- IV - 3950-130-4600-140-5300-150-6050-160-6850-170-7700-180-8600-190-9550.
- V - 4100-140-4800-150-5550-160-6350-170-7200-180-8100-190-9050-200-10050.
- VI - 4250-150-5125-160-5925-170-6775-180-7675-190-8625-200-9625-210-10675.

VII - 4400-160-5200-170-6050-180-6950-190-7900-200-8900-210-9950-220-11050.

VIII - 4550-170-5400-180-6300-190-7250-200-8250-210-9300-220-10400-230-11550.

IX - 4700-180-5600-190-6550-200-7550-210-8600-220-9700-230-10850-240-12050.

X - 4900-190-5850-200-6850-210-7900-220-9000-230-10150-240-11350-250-12600.

Demand No. 2: Flat Rise:

Union demands that all the workmen shall be given the flat rise at the rate mentioned below:

Grade: I, II & III : Rs. 2000/-

Grade: IV, V and VI : Rs. 2100/-

Grade: VII, VIII & IX : Rs. 2200/-

The above amounts should be added to the existing basic and thereafter filled in the revised pay scale in the higher stage.

Demand No. 3: Seniority Increments:

Union demands that the workmen should be given Seniority increments as mentioned below:

Service upto 3 years : One increment.

Service from 3 yrs. to 7 yrs. : Two increments.

Service from 7 yrs. to 10 yrs. : Three increments.

Service from 10 yrs. to 15 yrs. : Four increments.

Service from 15 yrs. to 20 yrs. : Five increments.

Service from 20 yrs. to 25 yrs. : Six increments.

Service from 25 yrs. to 30 yrs. : Seven increments.

Service above 39 years : Eight increments.

Demand No. 4: Variable Dearness Allowance:

Union demands that the VDA shall be paid as applicable to the employees of Goa Tourism Development Corporation i.e. 100% neutralization beyond 121 Points of AICPI Series – 2001.

Demand No. 5: House Rent Allowance:

Union demands that the HRA should be paid at the revised rate of 30% of Basic and Dearness Allowance, as the cost of accommodation is very high in Goa due to Tourist State.

Demand No. 6: Children Education Allowance:

Union demands that all workmen shall be paid Education Allowance at the rate of Rs. 1000/- per month, to meet the expenses of education of their children.

Demand No. 7: Conveyance Allowance:

Union demands that an amount of Rs. 800/- shall be added to the existing Conveyance Allowance.

Demand No. 8: Transport facility:

Union demands that the free transport facility should be provided to those workmen who are presently not provided with this facility.

Demand No. 9: Paid Holiday:

Union demands that all the workmen shall be granted paid holidays @ 16 days per year.

Demand No. 10: Leave:

Union demands that all the workers should be given leave on following basis:

(A) Earned Leave: Union demands that all the workmen should be given Earned Leave @ 35 days E.L. per year with accumulation upto 120 days and leave shall be allowed to take 10 times in a year.

(B) Casual Leave: Union demands that all the workmen should be given Casual Leave at the rate of 12 days per year with encashment facility.

(C) Sick Leave: Union demands that all the workmen should be given Sick Leave @ 15 days per year and accumulation upto 60 days.

Demand No. 11: Leave Travel Assistance:

Union demands that LTA should be paid at the revised rate of one month gross wages with minimum of four Earned days leave. The amount shall be paid one week before the commencement of leave.

Demand No. 12: Promotion Policy:

Union demands that separate promotion policy should be promulgated in consultation with the Union.

Demand No. 13: Loan:

Union demands that interest free loan of Rs. 200000/- should be granted for House-repair and construction of House. And Rs. 50000/- to meet the expenses towards the purchase of household articles or marriage of self or his/her family member, Scooter, etc.

Demand No. 14: Gifts:

Union demands that the workmen should be given service award as mentioned below:

Service upto 5 years gift worth Rs. 3500/- with service certificate.

Service from 5 yrs. to 10 yrs. gift worth Rs. 5000/- with service certificate.

Service from 10 yrs. to 20 yrs. Gift worth Rs. 7500/- with service certificate.

Service above 20 yrs. Gift worth Rs. 10000/- with certificate.

Union further demands that those workmen retire shall be given 20 gram gold chain.

Demand No. 15: Festival Allowance:

Union demands that all the workmen shall be paid Festival Allowance @ Rs. 5000/- once in a year at the time of festival to meet the additional expenses incurred by him for such festival.

Demand No.16: Employment next to kin:

Union demands that the kin of the workmen who died or retired shall be given employment in the Company.

Demand No. 17: Bonus/Ex-gratia:

Union demands that all the workers shall be paid Bonus/Ex-gratia @ 30% of gross wages every year before Diwali festival.

Demand No. 18: Up gradation:

Union demands that those employees could not get higher grade such employees should be upgraded in higher grades as and when they complete 5 years in one grade.

Demand No. 19: Brake Shift Allowance:

Union demands that all the workmen who are working in brake shifts shall be paid brake shift allowance @ Rs. 2500/- per month.

Demand No. 20: Fixed Dearness Allowance:

Union demands that an amount of Rs. 1000/- shall be added in existing FDA.

Demand No. 21: Payment of Gratuity:

Union demands that all the workmen who have worked for more than 5 years of service shall be paid Gratuity @ 30 days wages per year of service.

Demand No. 22: Period of Settlement:

Union demands that the period of this settlement shall be for three years i.e. 1st February, 2011 to 31st January, 2014.

(2) If the answer to issue No. (1) above is in the negative, then, to what relief the workmen are entitled?"

2. Upon receipt of the reference, it was registered as IT/55/2016 and registered AD notices were issued to both the Parties. Pursuant to service of notices, Party I filed a Claim Statement at Exb. 4 and Party II filed its Written Statement at Exhibit 5.

3. In short, the case of the Party I is that the Employer started running the present Hotel establishment from 1982 and it has continuously been in the business since then. The Cidade de

Goa Hotel Employees Union/the Union is a registered Trade Union under the Trade Union's Act, 1926. The Union has been espousing the cause of the workmen and negotiating the terms of services with the Employer since last many years. The first Wage Settlement between the Union and the Employer was entered into on 20-08-1984 and the last one was signed on 23-12-2004 and thereafter there have been no Wage Settlements in the establishment as the Employer/Party II had refused consistently to negotiate any terms of service with the Union. The last Wage Settlement expired on 31-01-2008 and since then the Employer did not make any efforts to negotiate the terms of service with the Union even though there was inflation. The Union accordingly preferred a Charter of Demand dated 21-08-2008 which eventually came before this Tribunal as IT/28/2009 and my Learned Predecessor by way of final Award dated 29-09-2015 partially granted only few demands raised by the Union. This final Award has been stayed by the Hon'ble High Court of Bombay at Goa vide its Order dated 16-07-2015 in Writ Petition No. 486/2015. The last Charter of Demand dated 21-01-2008 only covered the period from 01-02-2008 to 31-01-2011 and the practice in the establishment since the first Wage Settlement was to enter into Wage Settlements for a period of three years and revise them thereafter and accordingly the Union had raised the present Charter of Demand dated 26-06-2012 covering the period 01-12-2011 to 31-01-2014 as per the long standing practice and custom prevailing in the present establishment. In the said Charter of Demand the Party I has made a case for revision of wages, allowances and other demands as the present wages of the workers in all the grades are at a level below the minimum wages and this was done so as to bring out at least a fair wage level.

4. The Applicant states that the Hotel establishments maintained by the Employers in the State of Goa are paying higher wages and the working conditions these establishment are also better than the Employer of the present case and as such the Applicant has further mentioned in detail in Para 19 with the individual demands as listed in the Charter of demands upto Para 19 to 58 of the Claim Statement and the same are as follows:

19. The Union deals with the individual demands as listed in the charter of demands dated 26-06-2012 hereinafter.

Demand No. 1: Pay Scales:

20. The last revision in Pay Scale was done w.e.f. 01-08-2000 in the settlement dated 21-05-2001. In

that settlement the duration of the revised Pay Scale was not fixed and thus it was open for revision after the duration of that settlement. In the next settlement (and the last settlement between the parties) dated 23-12-2004 there was no revision to the Pay Scales. This Hon'ble Tribunal in its Final Award dated 29-01-2015 has rejected the revision of Pay Scales purely for lack of evidence. Thus the Pay Scales in the establishment have remained stagnant from 01-08-2000 till date i.e. for about 17 years and continue to remain so.

21. Since the pay scale/basic wages have remained unchanged since long the actual wages and the purchasing power of the workmen's pay packet has considerably deteriorated.

22. Pay Scales denote the 'basic wages' each workman in every category (Grade) is entitled to and therefore is the most important component of the pay packet. The Pay Scale also includes the annual increment the workmen are entitled to in their Grade.

23. In the establishment 'overtime' being dependent on the Basic Wages (as apparent from the Last settlement dated 23-12-2004) the importance of Basic Wages/Pay Scales is obvious and need not be restated.

24. The basic paid to the workmen in the region by the other hotels GTDC, Taj Hotels, Majorda Beach Resort etc. are much higher than what is paid to the concerned workmen in the present reference. At present the Basic Wage constitutes hardly 30% of the total salary inclusive of allowances and hence the workmen of the company are justified in seeking revision in the pay scales so as to bring them on par with the conditions prevailing in the region.

Demand No. 2: Flat Rise:

25. In the last two settlements there has been no flat rise given by the Employer. The Industrial Tribunal in its Final Award dated 29-01-2015 also had rejected the Union's demand for a Flat Rise.

26. Since the Pay Scale has remained static naturally its purchasing power has reduced. Over time inflation cuts into the basic wages and reduces its ability to bear any extra burden. Flat Rise helps to infuse stability in a workmen's pay packet by trying to bring the purchasing power of his package back to normalcy.

Demand No. 3: Seniority Increments:

27. Every wage adjudication must not be merely an attempt to increase the wages of all the employees on an average basis, but rather must be a holistic approach where wages in all grades must

reflect the number of years put in service by the employees.

28. Loyalty as indicated from the length of service must be one of the many considerations that must be kept in mind of the Hon'ble Tribunal during fixation of wages.

29. The Seniority Increments sought for by the Union is in the light of the fact that the employees who have put in a greater length of service with the Employer must be given a better pay packet than new joiners. Right now the difference between newcomers and workers working since long is disparate and this must be removed and the gap between their wages must be fixed. This disparity has caused greater discomfort between the workers.

Demand No. 4 and No. 20: Revision in Variable Dearness Allowance (VDA) and Fixed Dearness Allowance (FDA):

30. VDA is the most important component currently in the pay packet of the workers of the establishment. It is only the VDA component that helps the workers to reduce the effect of inflation on their salaries. The Union maintains that the present VDA levels are no longer sufficient to bear the brunt of inflation and need to be revised.

31. In Settlement dated 21-05-2001 the rate of VDA was revised from Rs. 1.25/- per point increase in AICPI (1960=100) to Rs. 1.30/- per point increase. Thus there was a revision of a meager Rs. 0.05/- paise in the rate of VDA. Thereafter in the settlement dated 23-12-2004 there was no revision to the VDA.

32. This Hon'ble Tribunal in its Final Award dated 29-01-2015 also has given a very meagre increase in the rate of VDA. This Hon'ble Tribunal has revised the rate of VDA to Rs. 1.40/- i.e. a mere increase of Rs. 0.10/- paise. However as the Final Award dated 29-01-2015 was stayed by the Hon'ble High Court.

33. The Exponential increase in the AICPI in additions to other factors by themselves justify the revision in VDA and a grant of 100% neutralization of the same. This principle of 100% neutralizations has already been accepted by another employer, namely GTDC, operating in the same industry as well as region.

34. The Fixed Dearness Allowance is also to be paid on similar lines i.e to bear the brunt of inflation and hence the demand of the rise.

Demand No. 5: House Rent Allowance (HRA):

35. The existing HRA given to the workers vary with their Grades. In settlement dated 21.05.2001 all workmen were granted Rs. 115/- flat increase in

HRA, and subsequently in the settlement dated 23-12-2004 all workers were granted a flat increase of Rs. 150/- in HRA. This Hon'ble Tribunal has granted an increase of Rs. 250/- in its Final Award dated 29-01-2015, which has been stayed.

36. The real problem with the present rate of HRA is that it is constant and does not increase at all. The cost of Housing having exponentially increased even today the employee in Grade I gets HRA of Rs. 690/- and the employee in Grade IX gets Rs. 800/-. It is a matter of common knowledge that no housing accommodation will be available at that meager rate. Therefore the concept of HRA as it should be has lost its value in the present establishment.

37. HRA must truly reflect, at least to some extent, the actual cost of accommodation in the State of Goa and the flat rates of HRA as seen in the previous settlements and the Final Award dated 29-01-2015 must be seen in that light.

38. Once HRA is made to be given as a percentage of Basic + VDA then it will truly take care of the inflationary housing cost in the State and hence the demand.

Demand No. 6: Children Education Allowance:

39. The Employer has never made any provision to support the children of the employees and hence this demand was made in the last two charter of demands.

40. The industrial law concept of 'minimum wage' includes a certain measure of education costs as laid down by various judgments of the Supreme Court. Thus it is imperative that while considering the fixation of wages of its revision a certain provision must be made for allowances towards children education.

41. The Hon'ble Tribunal in its Final Award dated 21-09-2015 has granted a meager sum of Rs. 300/- per month towards Children Education Allowance. With the advance in information technology the needs of children towards their education have increased and become more costly. Use of computers in School projects and the cost to printout the information as well as other stationary has to be borne by the parents. These needs have become the most basic necessities for the children today and hence the minimum requirement for the workmen's family.

42. The social welfare basis of this claim cannot be overlooked and this demand must be favorably considered.

Demand No. 7 & 8: Conveyance Allowance and

Transport Facility:

43. Travelling Costs and also costs of fuel have always been increasing. Most of the employees travel using the local buses and spend a considerable amount of money on the bus fare.

44. The Conveyance Allowance has not increased much since the last two settlements and this Hon'ble Tribunal granted a meager increased of Rs. 250/- in the travelling allowance by way of its Final Award dated 29-01-2015.

45. The cost incurred on travel by the workmen can also be offset by the Employer providing free transport facilities. The latter would also cut down the cost to the company considerably.

Demand No. 9, 10 and 11: Paid Holidays, Leave and Leave Travel Allowance:

46. These demands have never even discussed by the employer in the past. Paid holidays, leaves and allowance such a LTA form a part and parcel of the concept of job satisfaction in the establishment.

47. Other Employers are giving 16 paid holidays per year in contrast to the 9 paid holidays presently given to the workmen by the Employer.

48. Leaves are important to allow employees to remain efficient for the entire year and are an import part of job satisfaction. To reiterate the Tribunal's endeavor must not be restricted to whether the wages must be increased or not but also it must undertake a holistic valuation of the conditions of service in the establishment.

Demand No. 12 and 18 Promotion Policy and Upgradation:

49. At present there is no promotion policy in the establishment. If the workers are expected to put in long years of service they must be guaranteed some career development without which the zeal to work towards progress might not be there. Therefore the Tribunal must direct that the Employer to formulate a promotion policy in consultation with the Union.

50. Upgradation to the next grade after certain years of service can also contribute to the satisfaction quotient of the employee and his career and personal growth.

Demand No. 13, 14, 15 and 18: Loans, Gifts, Festival Allowance Employment to kin:

51. These demands reflect the different aspects that the Hon'ble Tribunal must consider to improve the conditions of service of the workmen in the establishment.

52. It is a matter of common knowledge that getting a loan from a bank is very difficult for workers with meager salaries and therefore for them to meet various needs of life like housing, marriages etc Loans from the Employer become imperative.

53. Although termed as Gifts, the Union has actually demanded service Awards which enhance the spirit of the employees and inspires them to do more and efficient work with dedication to the employer.

54. Festivals are an import aspect of very Indian's life and therefore the demand. Due to the diversity of cultures and religions many festivals are celebrated throughout the year and the Employer must contribute to the welfare of the Worker's families.

55. Worker families with only one earning requires sum assurance that after the death of the members the Employer will provide some assistance. It is in this light that the demand for employment for next to kin has been made. This demand has to be seen in the light of the social welfare of the workmen's family.

Demand No. 17 and 21: Bonus/Ex Gratia and Gratuity:

56. Both these demands are justified as they form part and parcel of the concept of social welfare of the workmen. Without these payments it is difficult to keep the spirits of the workers lifted and there will be an eventual drop in their efficiency.

57. Working ion shift, that too with differential timings has an adverse effect not only on the health of the workers but their finances. Workers are called in for some hours and then given a break and then again called after come hours to work.

58. These practice although impermissible under the law is prevalent in the establishment which cause great mental and physical strain to the workers and hence must be accordingly compensated.

5. It is therefore prayed that this Tribunal may answer the reference in favour of the Workmen and grant all their demands raised by the Union on behalf of the workers and any other reliefs as deemed fit.

6. In response, the Party II filed their Written Statement resisting the same which is at Exhibit 5. In the Written Statement the Party II has raised objections that the charter of demand dated 26-06-2012 referred for adjudication pursuant to the present reference is illegal, incompetent and not justified and as such the same needs to be

dismissed on the grounds as mentioned in the Written Statement.

7. It is further stated that admittedly, the last Settlement dated 23-12-2004 between the Parties was effective for a period of 4 & ½ years i.e. from 01-08-2003 to 31-01-2008. It is further stated that in the last Charter of Demands dated 21-01-2008, the demand was made by Party I that period of Settlement should be for a period of 3 years i.e. from 01-02-2008 till 31-01-2011, which said demand granted by the Hon'ble Industrial Tribunal vide its Final Award dated 29-01-2015 passed in reference No. IT/28/2009. It is stated admittedly that the said Award has been challenged by Party II by filing Writ Petition No. 486/2015 (and also by Party I by filing Writ Petition No. 540/2015) before the Hon'ble High Court of Bombay at Panaji and further that the operation of the said entire Award dated 29-10-2015 has been stayed by the Hon'ble High Court vide Interim Order dated 16-07-2015 passed in the said Writ petition No. 486/2015, which said factual position has been admitted by the Party I in Para 7 of the Claim Statement.

8. It is stated and submitted that one of the ground of challenge raised by the Party II to the said Award dated 29-10-2015 in their Writ Petition No. 486/2015 before the Hon'ble High Court is that considering the position that the last Settlement dated 23-12-2004 between the Parties was effective for a period of 4 & ½ years i.e. from 01-08-2003 to 31-01-2008, the Award ought to have been held to be operative for a said period of 4 & ½ years i.e. from 01-02-2008 to 31-07-2012 or in any event the same ought to have been held to be effective prospectively.

9. It is further stated that since the issue of period of operation of the Award is a subject matter of challenge in the Writ Petition No. 486/2015 filed by Party I as aforesaid, question of adjudicating Charter of Demands dated 26-06-2012 submitted by the Party I to Party II allegedly for the period from 01-02-2011 to 31-01-2014 by this Industrial Tribunal does not arise until and unless the Writ Petition No. 486/2015 is finally decided by the Hon'ble High Court of Bombay at Panaji specifying the period of operation of the said Award dated 29-01-2015.

10. The Party II states that right from the commencement of Hotel business in the year 1982, both the Parties had entered into various industrial settlements.

11. It is further stated that the last settlement dated 23-12-2004 between the Parties was effective for a period of 4 years i.e. from 01-08-2003 upto 31-01-2008 and before the expiry of the said

Settlement dated 23-12-2004, the Party I had served a Charter of Demands on the Party II under letter dated 21-01-2008 pursuant to which meetings were held between the representatives of the Party II and the Office bearers of the Party I at various times but the matter could not be settled and as such the Party I raised an industrial dispute before the Labour Commissioner at Panaji-Goa/the conciliation proceedings which also failed as no settlement could be arrived at and these proceedings ended in failure and the Conciliation Officer sent his report of failure of conciliation proceedings dated 11-05-2009 to the Government of Goa which thereafter referred the dispute for adjudication to this Tribunal bearing reference No. IT/28/2009 which was decided by this Tribunal by partly allowing the same by granting some of the demands and rejecting other demands raised by Party I and during the pendency of the said dispute, the Party I raised a fresh Charter of Demands dated 26-06-2012 purportedly for the period of three years from 01-02-2011 to 31-01-2014. It is stated that submitting fresh Charter of Demand dated 26-06-2012 by Party I on Party II was illegal and bad in law as much as dispute pertaining to the earlier Charter of demands dated 21-01-2008 which was pending before this Tribunal in reference No. IT/28/2009.

12. It is further stated that the demands submitted by the Union are/were beyond the financial capacity of the Party II and on account of non-settlement of the said demands by the Party II, the Party I raised the industrial dispute vide their letter dated 09-04-2015 before the Asst. Labour Commissioner at Panaji seeking his intervention in the matter.

13. It is stated that upon receipt of the said letter, Party II submitted their reply dated 22-05-2015, inter alia, submitting that raising/submitting fresh Charter of Demands dated 26-06-2012 by Party I on party II was illegal, bad in law in as much as dispute pertaining to the earlier Charter of Demands dated 21-01-2008 was pending before this Industrial Tribunal and further that they had challenged the said Award dated 29-01-2015 by filing Writ Petition before the Hon'ble High Court of Bombay at Panaji, whereunder they had challenged the period of operation of the Award and therefore question of considering the Charter of Demands dated 26-06-2012 raised by the Party I did not arise at all. It is further stated that as the dispute could not be resolved/settled, the same ended in failure and the Conciliation Officer sent his report of failure of conciliation proceedings under No. IRM/CON/(12)/

/2015/6053 dated 03-11-2015 to the Government of Goa, which thereafter vide Order of Reference under No. 28/2/2016-lab/797 dated 11-11-2016 referred the dispute pertaining to the said Charter of Demands dated 26-06-2012 for adjudication to this Tribunal by the present reference.

14. The Party II has also raised objections regarding the legality and justification of the said Charter of Demands dated 26-06-2012 raised by the Party I on them by mentioning the pay scale which were framed with the sole intention that there should not be any need to restructure or revise the same at least for next 25 years and also keeping in mind the prospects of the Hotel establishment including itself in the next 10 to 15 years. That in respect of the Charter of Demand dated 12-08-2000, the member workers of the Party I were granted fitment and flat-basic rise as Seniority Increments, Dearness Allowance, HRA, Travelling Allowance, etc. In terms of the said settlement dated 21-05-2001 w.e.f. 01-08-2000 and thereafter the arrears of benefits were also paid. The Charter of Demands dated 26-06-2012 submitted by the Party I is beyond the financial capacity of the Party II in as much as the Party II would not be in a position to bear the additional financial burden that would be imposed on them by accepting the Charter of Demands. The Party II has been granting and providing to all its workmen every year several benefits and the total salary/wage bill of the entire workforce is high as compared to the amount of revenue receipts by the Party II. They also provide loans to the needy workmen and Party II has also obtained personal accident policy in respect of the workmen and is paying premium every year. They also supply free food to the workmen and provide subsidized transport facility and those workmen who are out coverage of ESI Act, 1948, the party II has been providing medical allowance every year. The Party II has been granting performance based increments to the eligible workmen in addition to the statutory increments.

14. It is further stated that Party II has been extending the benefits to its workmen and has incurred substantial expenses every year which are required to be taken into account while considering the Charter of Demands raised by the Party I as the Party I has not taken into consideration the monetary value by making the said Charter of Demands. The Party II has nearly employed 500 workers whereas only 73 permanent workers are the members of the Party I and if the demands made by Party I are granted, then there would be further demand from other workers.

15. It is further stated that though the Party II being a Company incorporated under the Companies Act, 1956 has about 3600 shareholders and though the Party II started its hotel establishment in the year 1982, however, for 23 long years, shareholders were not awarded and the first dividend was paid to the shareholders only in the year 2005, even though the Party II had entered into 7 settlements with the Party I during the said period since its inception and any revision without considering the shareholders will not be in the interest of the Party II and its shareholders' investment and industry as a whole. Hence, it is therefore prayed that the reference may be rejected by holding that the workmen are not entitled to any relief as prayed.

16. In the Rejoinder at Exhibit 5A the Party I denied the case put forth by Party II in their Written Statement.

17. Based on the above mentioned pleadings my Learned Predecessor has framed the Issues at Exh. 7 which are as follows:

ISSUES

1. Whether the Party I proves that the Charter of Demands raised by it vide their letter dated 26-06-2012 against the Party II are legal and justified?
2. Whether the Party II proves that the reference of the dispute regarding the Charter of Demands dated 26-06-2-12 during the period of operation of the earlier Award dated 29-01-2015 in respect of the same demands is illegal and bad in law?
3. What relief? What Award?

During the present proceedings an application dated 13-10-2021 for an Award in terms of settlement came to be filed by all the Parties to the present reference stating that they have arrived at a settlement under Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 which is at Exh. 29 Colly and that they do not wish to continue with the reference and prayed that an award be passed in terms of said settlement dated 23-09-2021.

11. The above application has been signed by the President of Party I/Union, Mr. Joaquim Gomes, Working President Shri Puti Goankar and other Committee Member, so also the representative of Party II, Mrs. Neeta Brid, General Manager and Mr. Dileep Verlekar, Consultant and agreed upon the terms mentioned below:

TERMS OF SETTLEMENT

1) *Terms of Settlement under the Award dated 29-01-2015, in Reference No. IT/28/2009*

A. Ex-Gratia payment of Rs. 5000/-:

It has been mutually agreed between both the Parties that the payment of difference between Rs. 1450/- per month per worker awarded by the Tribunal and the increase of Rs. 1125/- given by the Management is fully complied with by the Management. However, regarding the difference which has arisen in the manner of payment, it has been mutually agreed between the parties that a onetime payment of Rs. 5,000/- (Rupees five thousand only) to be paid to such workmen as mentioned in Annexure A, who had received less than the awarded amount.

The above term of the settlement is in modification/variation of the award dated 29-01-2015 under reference No. IT/28/2009 and shall be in terms of the order passed in the consent terms to be filed in writ petitions namely 486/2015 and Writ Petition No. 540/2015 before the High Court of Bombay at Goa.

In view of the above, the parties mutually agree that the above payment is towards full and final settlement of the charter of demand dated 21-10-2008 and in compliance of the Award dated 29-01-2015 under reference No. IT/28/2009 in the matter of revision of wages. It is further agreed between the Parties that such ex-gratia payment shall not be subject to any deductions under Labour Laws for the time being in force.

Further, the parties shall enter into a consent terms on the basis of aforesaid mentioned terms and the same shall be filed before the Hon'ble High Court of Bombay at Goa for order in terms of settlement.

B. Compensation for unionised workmen who retired/superannuated on attaining the then superannuated age of 55 years:

It has been mutually agreed between the parties that the workmen listed in Annexure B attached herewith in respect of whom the Industrial Tribunal has revised the age of retirement as 58 years and who had retired/superannuated at the age of 55 years shall be entitled to the benefits in the following manner:

The Workmen who are not engaged by the Company either as temporary or FTC or Retainer after superannuating at the age of 55 years shall be paid compensation/ex-gratia equivalent to 50% of the gross wages drawn by them at the time of

retirement/superannuation that the Workmen would have been otherwise entitled to if they had continued to be in regular employment till the age of 58. This compensation/ex-gratia shall be paid for the remaining period till they reach 58 years of age or death whichever is earlier.

(For the purpose of determining 58 years of age, the actual date on which the workmen completes 58 years shall only be considered).

The above term of the settlement is in modification/variation of the award dated 29-01-2015 under reference No. IT/28/2009 and shall be in terms of the order passed in the consent terms to be filed in writ petitions namely 486/2015 and Writ Petition No. 540/2015 before the High Court of Bombay at Goa.

In view of the above, the Parties mutually agree that the above payment is towards full and final settlement of the charter of demand dated 21-01-2008 and in compliance of the Award dated 29-01-2015 under reference No. IT/28/2009 in the matter of revision of wages. It is further agreed between the parties that such ex-gratia payment shall not be subject to any deductions under Labour Laws for the time being in force.

Further, the parties shall enter into a consent terms on the basis of aforesaid mentioned terms and the same shall be filed before the Hon'ble High Court of Bombay at Goa for Order in terms of settlement.

2) Settlement of charter of demand dated 24th June, 2012 pending before the Industrial Tribunal

It has been mutually agreed between the parties that the permanent Workmen who are members of the Union and who were on the rolls of the Company as on 1st February, 2011 and continue to be on rolls of the Company as on date of signing of the settlement shall before the period from 01-02-2011 to 31-01-2014 be paid Rs. 1450/- per month ex-gratia as indicated in Annexure C of this Settlement. (Formula Rs. 1450 x 36 x 3 on actual attendance base). It is further agreed between the parties that such ex-gratia payment shall not be subject to any deductions under Labour Laws for the time being in force. Annexure C is attached herewith.

In view of the above, the parties mutually agree that the said payment is towards full and final settlement of the charter of demand dated 24-06-2012 and all such demands raised therein in the proceedings under Reference Number IT/55/2016 pending before the Industrial Tribunal, Panaji, Goa. Further, the parties shall file an application before the Hon'ble Industrial Tribunal, Panaji, Goa

for Award in terms of Settlement. It is further agreed between the parties that such ex-gratia payment shall not be subject to any deductions under Labour Laws for the time being in force.

Further:

- (i) Those eligible Workmen as above who have superannuated or died/expired during the course of their employment shall be eligible to receive the above mentioned ex-gratia.
- (ii) It has been mutually agreed between the parties that those permanent Workmen and members of the Union who have resigned from the services between 31st January, 2011 and the date of signing this Settlement or who have submitted resignation and are under notice period shall not be eligible for the ex-gratia payment mentioned above.

3) Benefits of wage revision & other terms & conditions of service for the period 1st February, 2014 to 31st January, 2017 and 1st February, 2017 to till 31st January, 2020

- A. Period from 1st February, 2014 to 31st January, 2017: It has been mutually agreed between the parties that the permanent Workmen who are members of the Union and who were on the rolls of the Company as on 1st February, 2014 and continues to be rolls of the Company as on date of signing of the settlement shall before the period 01-02-2014 to 31-01-2017 be paid Rs. 1500/- per month ex-gratia as indicated in Annexure D of this settlement. Annexure D is attached herewith.

(Formula Rs. 1500 x 36 x 2 on actual attendance base). It is further agreed between the parties that such ex-gratia payment shall not be subject to any deductions under Labour Laws for the time being in force.

- B. Period from 1st February, 2017 to 31st January, 2020: The operating period of this revision shall be 1st February, 2017 to 31st January, 2020 and for this period the permanent Workmen who are members of the Union and who were on the rolls of the Company on 1st February, 2017 and continued to be on the rolls on the Company on the date of signing this settlement shall be paid Rs. 1600/- per month as ex-gratia as mentioned in Annexure E. Annexure E is attached herewith. (Formula Rs. 1600 x 36 x 1 on actual attendance base). It is further agreed between the Parties that such ex-gratia payment shall not be subject to any deductions under Labour Laws for the time being in force.

(i) Those eligible Workmen as above who have superannuated or died/expired during the course of their employment shall be eligible to receive the above mentioned ex-gratia.

(ii) It has been mutually agreed between the parties that those permanent Workmen and members of the Union who have resigned from the services between 31st January, 2011 and the date of signing this Settlement or who have submitted resignation and are under notice period shall not be eligible for the ex-gratia payment mentioned above.

In view of payments received as above, the Union agrees not to raise any demand in respect of the period from 1st February, 2014 till 31st January, 2020 involving financial liabilities or otherwise on the Management. This will be treated as full and final settlement of all demands for the said period from 1st February, 2014 to 31st January, 2020.

4) Wage revision for three years period from 2020 to 2023

Union has requested the Management that as all pending matters are amicably settled, the wage revision for the period from 2020 to 2023 should also be settled in the larger interest.

Since the Hotel had closed its operations from April, 2020 till October, 2020 due to Covid-19 Pandemic and consequent lockdown/Government imposed restrictions and salaries were not paid for the period from May, 2020 to October, 2020, it has been mutually agreed that the terms of this settlement shall be for a period of three years commencing from 1st November, 2020 (i.e. the date on which the Hotel restarted operations) till 31st October, 2023. Accordingly, it is further agreed between the parties that from the period from May, 2020 to October, 2020 the workmen shall not raise any claim over the above compensation paid for the said period and such compensation shall not be subject to deductions.

A. Period of Settlement and Applicability:

This settlement shall be operative for a period of three years from 1st November, 2020 to 31st October, 2023 and applicable to only those permanent Workmen who are members of the Union and who were on the permanent rolls of the company as of 1st November, 2020 and continued to be on the rolls of the Company as on the date of signing this settlement and as mentioned in Annexure F, attached herewith.

B. Grades and Scales:

It has been mutually agreed between both the

parties that Grades and Scales shall be revised as under:

GRADE SCALE

- | | |
|-------|--|
| I. | 825-115-1400-125-2025-135-2700-145-3425-155-4200-165-5025-175-5900-185-6825. |
| II. | 1025-125-1650-135-2325-145-3050-155-3825-165-4650-175-5525-185-6450-195-7425 |
| III. | 1225-135-1900-145-2625-155-3400-165-4225-175-5100-185-6025-195-7000-205-8025. |
| IV. | 1425-145-2150-155-2925-165-3750-175-4625-185-5550-195-6525-205-7550-215-8625. |
| V. | 1625-155-2400-165-3225-175-1400-185-5025-195-6000-205-7025-215-8100-225-9225. |
| VI. | 1825-165-2650-175-3525-185-4450-195-5425-205-6450-215-7525-225-8650-235-9825. |
| VII. | 2025-175-2900-185-3825-195-4800-205-5825-215-6900-225-8025-235-9200-245-10425-255-11700-265-13025. |
| VIII. | 2225-185-3150-195-4125-205-5150-215-6225-225-7350-235-8525-245-9750-265-12350-275-13725. |

C. Restructuring wage:

It has been mutually agreed between both the parties that the gross wages as on 31st October, 2020 shall be arrived at after adding the monthly ex-gratia payment as referred to in Clause 2 (Rs. 1450/-), 3A (Rs. 1500/-) Workman to the maximum of Rs. 4550/-. It is further agreed between the parties that to the total gross amount thus arrived at shall be added a sum of Rs. 1600/- and the total cumulative amount shall be paid in the manner provided hereunder:

a) *Basic*: It has been mutually agreed between the parties that 40% of the Gross wages less VDA shall be treated as the new Basic and fitted into respected Grade and Scale of each employee... The next annual increment shall be due on 1st April 2022.

b) *Fixed Dearness Allowance*: It has been mutually agreed between the parties that out of the balance Gross wage (less new Basic and VDA) Rs. 2500/- shall be the new FDA.

c) *House Rent Allowance and Children's Education Allowance*: It has been further mutually agreed between the parties that the balance Gross salary (less new Basic, FDA and VDA) shall be divided between HRA and children's Education Allowance in equal proportion.

d) *Variable Dearness Allowance*: It has been mutually agreed between the parties that till

31-10-2023, the VDA shall follow ALL INDIA CONSUMER PRICE INDEX FOR INDUSTRIAL WORKERS 1960=100 base in the following manner:

CPI Index 1960=100 neutralised at 1672 points

From	To	Rate per Point	Total Points	Amount Payable
1673	3026	1.3	1353	1758.0
3027	8000	1.4	4512	
8001	10000	1.5	2500	
10001 and above		1.6		

The Index Average per quarter and payable quarter shall be as follows:

Index for Quarter	Payable for the Quarter
Jan - March	July - Sept
April - June	Oct - Dec
July - Sept	Jan- March
Oct - Dec	April - June

5) *National & festival holidays*

It has been mutually agreed between the parties the Workmen shall be entitled to the following National and Festival Holidays.

1. Republic Day.
2. Good Friday.
3. Labour Day.
4. Independence Day.
5. Ganesh Chaturthi (First Day).
6. Gandhi Jayanti.
7. St. Francis Fest.
8. Goa Liberation Day.
9. Christmas Day.

In addition to above Holidays workmen can avail of two Restricted Holidays of their choice.

6) *Overtime Payment*: It has been mutually agreed between the parties that the existing practice of paying Overtime shall continue unaltered.

7) *Leave*: It has been mutually agreed between the parties that the existing confirmed employees shall be eligible for following leave

- A. Privilege leave 27 days per year provided he has put in 240 days attendance in a calendar year.
- B. Maximum balance as per prevailing practice.

C. Casual leave 07 days per calendar year non-cumulative.

D. Sick leave 10 days for those employees who are out of ESIC coverage. Maximum balance 20 days.

8) *Gratuity*: It has been mutually agreed between the parties that the present practice of payment of Gratuity shall continue for all existing workmen as referred in Annexure F.

9) *Loan*: It has been mutually agreed between the parties that the present practice of advancing Rs. 10,000/- as interest free loan for repair of house, purchase of land for residential purpose and for marriage shall continue, subject however to the condition that the benefit shall be restricted to maximum of twenty applicants per year. However the decision of the Management shall be final.

10) *Compensation in case of accidental death of employee while on duty*: It has been mutually agreed between the parties that all permanent employees shall contribute one day's basic wage and Management shall match with equal amount and pay the same to legal heir of the deceased employees.

11) *Accident on duty*: It has been mutually agreed between the parties that the existing practice of giving/arranging first aid through company's doctor or Government/private hospital shall be continued.

12) *Staff day*: It has been mutually agreed between the parties that the practice of giving a gift of Rs. 1500/- value each to those Workmen who have completed ten years of service in the Company shall be continued.

13) *Applicability*:

- A. The settlement shall be applicable to all the permanent Workmen who are members of the Union as referred in Annexure A, B, C, D, E and F and who are on the rolls of the settlement.
- B. It has been agreed that the benefit of this settlement shall not be extended to workmen who have raised individual dispute against the Company. However all efforts will be made to amicably settle these matters in consultation with the Union/concerned individual workman.
- C. The workmen availing the benefits under this settlement shall contribute 7.5% of the total arrears to the Union signatory to this settlement. The said amount shall be recovered from the arrears arising from this settlement. The terms & conditions of serve

and other benefits/privileges incorporated the earlier settlements and not varied by this settlement or by any law for the time being in force shall continue as if specifically provided in this settlement.

14) *Period of settlement*: This settlement shall be binding for three years period commencing from 1st November, 2020 and ending on 31st October, 2023 and shall continue to remain in force and binding thereafter until it is terminated in the manner envisaged under Section 19 of the Industrial dispute Act 1947.

15) *Payments of arrears*:

- A. The revised salary shall be incorporated in September, 2021 salary and the arrears from 1st November, 2020 to 31st August, 2021 shall be paid on or before 30th June, 2022.
- B. The arrears arising out of this settlement shall be paid in installments as follows:
 - i. The Payment as per Annexure A and 50% of the amount as mentioned in Annexure B shall be paid on or before 30th September, 2021.
 - ii. The remaining 50% of Annexure B and 50% of the payment as per Annexure C shall be paid two days before Diwali 2021.
 - iii. Balance 50% of payment as per Annexure C and 50% of Annexure D shall be paid during Christmas 2021.
 - iv. The remaining 50% of the Payment as per Annexure D and 50% of Annexure E shall be paid on or before 25th March, 2022.
 - v. Balance 50% of payment as per Annexure E shall be paid on or before 31st May, 2022.

The Tax applicable as per Income Tax Act will be calculated and deducted at source while paying each installment or monthly salary as done in the past.

16) *Miscellaneous*:

- A. As agreed, the Signatory Union has obtained approval of the members to sign the present settlement at the General Body Meeting held on 25-08-2021 and the resolution so passed in the General Body Meeting has been handed over to the company Management.
- B. It has been mutually agreed by the parties that this Settlement is in full and final settlement of all the demands raised by the Union and workmen in their Charter of Demands dated 21-01-2008, and the

consequent Award dated 29-01-2015 of Industrial Tribunal in Reference No. IT/28/2009 and the consequent Writ Petition number 486/2015 and 540/2015 pending before in the High Court of Bombay at Goa, and the Charter of Demands dated 24-06-2012 being currently adjudicated in reference Number IT/55/2016 before the Industrial Tribunal, Panaji.

- C. In view of the present settlement, both the parties agree to jointly file consent terms on the basis of the terms mentioned in Clause (1) above in Writ Petition No. 486/2015 and Writ Petition No. 540/2015 pending before the Hon'ble High Court of Bombay at Goa for order in terms of settlement.
- D. In view of the present settlement, both the parties agree to jointly file an application on the basis of the terms mentioned in Clause (2) above before the Industrial Tribunal, Panaji-Goa in Reference No. IT/55/2016 with a prayer for an award in terms of the settlement.
- E. It has been further mutually agreed by the parties that, in the view of the above mentioned amicable settlement arrived between the parties:
 - i. The Union agrees not to pursue reference IT/37/2013 in the matter of service charges presently pending before the Industrial Tribunal Panaji-Goa and the parties further agree to file an application before the industrial Tribunal, Panaji for an award in terms of settlement.
 - ii. The Management agrees that the Management shall pay the Union/workmen out of the aggregate amount of Rs. 11,29,200 which is deposited before the High Court of Bombay at Goa vide cheque bearing No. 464017 dated 10-10-2020 drawn on IDBI Bank, Panaji Goa, in Writ Petition 918/2019 an amount Rs. 94,062/- (8.33% towards ex-gratia and the concerned workmen shall be entitled to withdraw the said amount by making an application before the High Court of Bombay at Goa.

Both parties agree to sign an application for award in terms of settlement/consent terms covering-clauses 16(A), 16(B), 16(C), 16 (D), and 16 (E) which will be signed simultaneously with the signing of this terms of settlement for submitting to the Court/Appropriate authorities for obtaining the appropriate orders.

F. The Union agrees that in view of the above, during the period of the settlement, workmen/Union shall not raise any demands involving any financial or any other liability on the Company.

G. The Union and the Workmen agree to maintain industrial peace and harmony during the subsistence of the settlement and shall not resort to any direct actions, and shall take recourse to the machinery provided under the Industrial Dispute Act, 1947.

H. All such workmen who wish to avail the benefits under this settlements with all its terms and conditions incorporated therein shall have to give specific individual declaration as enclosed hereto as Annexure G within 10 days of the date of the settlement that the terms of this settlement are acceptable and binding upon him/her. He/she would have to further declare that the settlement is in full and final settlement of all the demands made by him/her or by and Union on his/her behalf and agree not to raise or pursue any demand raised by him/her or any Union on his/her behalf on any items covered by the settlement. The workmen referred to in the annexure A, B, C, D, E and F of the settlement shall make a contribution @ 7.5% of the arrears received by them to the Union who is signatory to this settlement and the management agree to deduct the said amount at source from the arrears payable to the workmen under the settlement and transfer the said amount to bank account of the Union.

I. The terms and conditions of service and other benefits/privileges incorporated in the earlier settlements or any written understanding between the parties and not varied by this settlement or by any law from time to time in force shall continue as if specifically provided in this settlement.

J. It has been agreed mutually to submit jointly copies of this settlement to The Labour Commissioner Panaji for Registration under Industrial Disputes Act, 1947.

12. I have gone through the application dated 13-10-2021 along with the Memorandum of Settlement at Exh. 29 Colly filed by both the Parties, which in my view, are just and fair and in the interest of both the Workmen/Party I as well as Employer/Party II and hence, the same are accepted.

In view of above, I pass the following:

ORDER

- (i) The reference at the instance of both the Parties stands disposed off in view of the application dated 13-10-2021 at Exhibit 29 Colly.
- (ii) Consequently, the benefits of the Settlement shall be extended to the workmen of Party II.
- (iii) No order as to costs.
- (iv) Inform the Government accordingly.

Sd/-

(Bela N. Naik),
Presiding Officer,
Industrial Tribunal and
Labour Court.

Notification

No. 28/2/2021-LAB/Part-III/576

The following Award passed by the Industrial and Labour Court, at Panaji-Goa on 08-11-2021 in Ref. No. IT/37/2013 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 19th November, 2021

IN THE INDUSTRIAL TRIBUNAL AND
LABOUR COURT

GOVERNMENT OF GOA

AT PANAJI

**(BEFORE MS. BELA N. NAIK, HON'BLE
PRESIDING OFFICER)**

Ref. No. IT/37/2013

Workmen,

Rep. by the President,
Cidade-de-Goa Hotel Employees Union,
C/o Hotel Cidade de Goa,
Vaiguinim Beach,
Dona Paula-Goa ...

Workmen/Party I

V/s

1. M/s Hotel Cidade de Goa,
Unit of Fomento Resorts & Hotels Ltd.,
Vaiguinim Beach,
Dona Paula-Goa ...

Employer/Party II (1)

2. M/s Indian Hotels Company Ltd.,
Vaiguinim Beach,
Dona Paula-Goa ...

Party II (2)

Workmen/Party I represented by Ld. Rep. Shri P. Gaonkar.

Employer/Party II (1) represented by Ld. Adv. Shri G. K. Sardesai along with Adv. Ms. N. Gaonkar.

Party II (2) is represented by Ld. Adv. P. J. Kamat.

AWARD

(Delivered on this the 8th day of the month of November of the year 2021)

By Order dated 18-09-2013, bearing No. 28/41/2013-Lab/635, the Government of Goa in exercise of powers conferred by Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short 'The Act'), has referred the following dispute to this Tribunal for adjudication.

"(1) Whether the action of the management of M/s. Hotel Cidade de Goa, Vaiguinim Beach, Goa in reducing the service charges payable to the employees by making the deductions towards the labour charges and breakage, with effect from April, 2009, is legal and justified?"

"(2) If not, what relief the workmen are entitled to?"

2. Upon receipt of the reference, it was registered as IT/37/2013 and registered AD notices were issued to both the parties. Pursuant to service of notices, Party I filed a claim statement at Exb. 4 and Party II filed its Written Statement at Exhibit 5.

3. The Party II is engaged in the Hotel business and is one of the oldest hotel in the State of Goa having reputation in business worldwide. The Party I states that the Hotel Cidade de Goa is a 5 Star Hotel having huge business and financially very strong and has made huge profits in the last consecutive three years. The Cidade de Goa Hotel Employees Union is a registered Union and is recognized by the Party II since its registration and since the formation of the Union, the Party II was signing the settlements with the Union and the last settlement was signed on 23-12-2004 for the period commencing from 01-08-2003 and the settlement dated 23-12-2004 was to be expired on 31-01-2008 and hence the Union submitted the fresh charter of demands dated 21-01-2008, but the Party II inspite of having sound financial position did not accept the charter of demands and the Party II refused to give reasonable rights and hence raised an industrial dispute before the Labour Commissioner, Panaji vide their letter dated 31-10-2008. The Party I states that as the workmen have resolved to refer the dispute of charter of demands for adjudication, the Employer got annoyed and started withdrawing some of the

facilities such as the Management started paying less charges after deducting the amount from the service charges and when the workers came to know about the illegal deduction from their service charges, they approached the Union and raised the issue of deduction before the Manager-HR.

4. The Party I further states no positive steps were taken by the Manager-HR and as such the workmen made written representation dated 03-06-2009 to their Food and Beverage Manager. This issue was also not resolved by the Management and no reply was also received from the Management nor the deductions were stopped and as such the Union vide their letter dated 16-12-2009 raised an industrial dispute before the Dy. Labour Commissioner for intervention. The Asst. Labour Commissioner on various occasions called both the Parties to settle the matter but the Party II Management acted in an adamant attitude and as such the conciliation failed. Upon receipt of the Failure Report the dispute was referred and hence vide letter dated 18-09-2013, the Government of Goa was pleased to refer the present dispute to this Tribunal which is as stated above. Hence, it is therefore prayed by the Party I that they are entitled for the reliefs as prayed in the Statement of Claim.

5. In response, the Party II filed their detailed reply denying the case put forth by the Party I and states that the order of reference dated 18-09-2013 is illegal, bad in law, null and void and not maintainable and the present reference needs to be rejected and they have raised their objections in the Written Statement to that effect. It is stated that the Claim Statement has been signed by Mr. Joaquim Gomes purporting to be the President of the said Union is not a competent authority to sign the Claim Statement.

6. It is further stated that there was no agreement or understanding with the Union or its workmen for payment of the amount of service charges collected by the Company as the Union/workmen had no existing right to claim the entire amount of service charges collected by the Management or any portion thereof and the said payment was entirely at the sole discretion of the Company. It is also stated that there was no agreement or understanding with the Union or its workmen regarding the various heads of deduction which was towards breakages of crockery and cutlery and labour charges to be made from the amount of service charges collected by the Company and therefore the workmen had no existing right to claim that they were entitled to the entire amount of service charges collected by the Management without any deduction whatsoever. It is also stated that right from the commencement of hotel business

in 1982, the Company and the Union have entered into various industrial settlements. However, the Management of the Company never agreed for payment of "service charges" or its quantum to its workmen under any of all the settlements with the Union at any point of time till date.

7. That under the charter of demand dated 12-08-2000 submitted by the Union, the Union had, for the first time made demand under Item No.10 for payment of service charges but this demand was dropped in the settlement dated 21-05-2001 effective from the period from 01-08-2000 to 31-07-2003. The union thereafter in their further charter of demands dated 30-07-2003 at Item No. 10 made demand for payment of service charges as mentioned in detail in the Written Statement.

8. It is further stated that the payment, disbursement of portion of the amount collected by way of service charges from the bills of the customers by the Management of the Company to the workmen was neither in terms of contract of employment, either express or implied entered into with the said workmen or in any terms of settlement, Award or any understanding with the Union and the said payment was entirely at the sole discretion of the Management of the Company.

9. That in the month of April, 2009 it was decided by the Management of the Company to deduct expenses incurred towards the engagement of Outdoor Caterer employees together with the cost of transport and cost of providing meals, uniform to the said employees and being aggrieved by this decision the workers from F&B Department made a representation dated 19-08-2009 objecting to this decision of the Management and requesting them to stop the payment done to ODC Staff and labourers from the amount of service charges collected by the Management w.e.f. April, 2009. The Management did not agree to this demand and as such the Union made a complaint/representation to the Labour Commissioner dated 16-12-2009. The Management of the Company sent their detailed reply dated 13-05-2010 and thereafter the meeting was held before the Conciliation Officer and Asst. Labour Commissioner at Panaji on 06-03-2013 and the matter could not be resolved and the conciliation proceedings ended in failure. The Failure Report dated 19-06-2013 was forwarded to the Secretary (Labour), Government of Goa and thereafter the matter was referred to this Tribunal for adjudication. The Party II therefore prays that the reference may be rejected holding that the Union is not entitled for any reliefs prayed for or to any other reliefs.

10. In the Rejoinder at Exhibit 6 the Party I denied

the case put forth by Party II in the Written Statement.

11. In the course of evidence, the Party I examined its witness Shri Joaquim Gomes and produced on record a copy of letter of Union dated 24-08-2009 at Exh. 19, a copy of letter of Union to Dy. Labour Commissioner dated 16-12-2009 at Exh. 20, a copy of notice of Asst. Labour Commissioner dated 12-02-2010 at Exh. 21, a copy of letter dated 13-05-2010 of the Employer to Asst. Labour Commissioner at Exh. 22, a copy of reply of Union dated 28-06-2010 to the Management letter dated 13-05-2010 at Exh. 23, copy of Minutes of meeting dated 06-02-2013 at Exh. 24, a copy of failure report dated 19-06-2013 at Exh. 25, a copy of letter dated 19-08-2009 at Exh. 26, a copy of list of tips collection for the month of Oct., Dec., 2009 and Jan 2010 as made by the A/c Dept. at Exh. 26A Colly, a copy of calculation of service charges and tips collected for the month of Jan, 2008 of Joaquim Gomes at Exh. 27 Colly, a copy of calculation of service charges for the month of July and Oct, 2009 at Exh. 28 Colly, a copy of calculation of service charges for the month of Oct, 2011 at Exh. 29, a copy of calculation of service charges for the month of April, 2012 at Exh. 30, a copy of calculation of service charges for the month of April and Dec, 2013 at Exh. 31 Colly, a copy of calculation of service charges for the month of March, 2014 at Exh. 32, a copy of General Ledger Report from 01-04-2012 to 31-05-2012 and from 01-04-2013 to 30-06-2013 at Exh. 33 Colly and a copy of IDS Sheet of 2014 at Exh. 34 Colly. During cross-examination by Adv. G. B. Kamat for Party II (1) a copy of letter dated 28-06-2010 addressed by the Union to the Assistant Labour Commissioner is taken on record and marked as Exh. 35.

12. That during the pendency of the present proceedings an application for intervention came to be filed at Exh. 36 by the Party I/Workmen for impleading Indian Hotels Company Limited as a Party to the present proceedings and my Learned Predecessor vide Order dated 23-09-2019 granted the said application and as such M/s Indian Hotels Company Limited is Party II (2) in the present case.

13. Written Statement came to be filed by Party II (2) which is at Exh. 42 and Rejoinder to this Written Statement of Party II (2) came to be filed by the Party I/Workmen which is at Exh. 43.

14. During the present proceedings an application dated 13-10-2021 for an Award in terms of settlement came to be filed by all the Parties to the present reference stating that they have arrived at a settlement under Section 2 (p) read with Section 18 (1) of the Industrial Disputes Act, 1947 which is at Exh. 49 Colly stating that they do not wish to continue with the reference and prayed that an award be

passed in terms of said settlement dated 23-09-2021.

15. The above application has been signed by the President of Party I/Union, Mr. Joaquim Gomes, Working President Shri Puti Goankar and other Committee Member, so also the representative of Party II, Mrs. Neeta Brid, General Manager and Mr. Dileep Verlekar, Consultant and agreed upon the terms mentioned below:

TERMS OF SETTLEMENT

1) TERMS OF SETTLEMENT UNDER THE AWARD DATED 29-01-2015, IN REFERENCE NO. IT/28/2009

A. EX-GRATIA PAYMENT OF Rs. 5000/-.

It has been mutually agreed between both the Parties that the payment of difference between Rs. 1,450/- per month per worker awarded by the Tribunal and the increase of Rs. 1,125/- given by the Management is fully complied with by the Management. However, regarding the difference which has arisen in the manner of payment, it has been mutually agreed between the parties that a onetime payment of Rs. 5,000/- (Rupees Five thousand only) to be paid to such workmen as mentioned in Annexure A, who had received less than the awarded amount.

The above terms of the settlement is in modification/variation of the award dated 29-01-2015 under reference No. IT/28/2009 and shall be in terms of the order passed in the consent terms to be filed in Writ Petitions namely 486/2015 and Writ Petition No. 540/2015 before the High Court of Bombay at Goa.

In view of the above, the parties mutually agree that the above payment is towards full and final settlement of the charter of demand dated 21-10-2008 and in compliance of the Award dated 29-01-2015 under reference No. IT/28/2009 in the matter of revision of wages. It is further agreed between the Parties that such ex-gratia payment shall not be subject to any deductions under Labour Laws for the time being in force.

Further, the parties shall enter into a consent terms on the basis of aforesaid mentioned terms and the same shall be filed before the Hon'ble High Court of Bombay at Goa for order in terms of settlement.

B. COMPENSATION FOR UNIONISED WORKMEN WHO RETIRED/SUPERANNUATED ON ATTAINING THE THEN SUPERANNUATED AGE OF 55 YEARS.

It has been mutually agreed between the parties that the workmen listed in Annexure B attached herewith in respect of whom the Industrial Tribunal has revised the age of retirement as 58 years and who had retired/superannuated at the age of 55 years shall be entitled to the benefits in the following manner:

The Workmen who are not engaged by the Company either as temporary or FTC or Retainer after superannuating at the age of 55 years shall be paid compensation/ex-gratia equivalent to 50% of the gross wages drawn by them at the time of retirement/superannuation that the Workmen would have been otherwise entitled to if they had continued to be in regular employment till the age of 58. This compensation/ex-gratia shall be paid for the remaining period till they reach 58 years of age or death whichever is earlier.

(For the purpose of determining 58 years of age, the actual date on which the workmen completes 58 years shall only be considered).

The above term of the settlement is in modification/variation of the award dated 29-01-2015 under reference No. IT/28/2009 and shall be in terms of the order passed in the consent terms to be filed in Writ Petitions namely 486/2015 and Writ Petition No. 540/2015 before the High Court of Bombay at Goa.

In view of the above, the Parties mutually agree that the above payment is towards full and final settlement of the charter of demand dated 21-01-2008 and in compliance of the Award dated 29-01-2015 under reference No. IT/28/2009 in the matter of revision of wages. It is further agreed between the parties that such ex-gratia payment shall not be subject to any deductions under Labour Laws for the time being in force.

Further, the parties shall enter into a consent terms on the basis of aforesaid mentioned terms and the same shall be filed before the Hon'ble High Court of Bombay at Goa for Order in terms of settlement.

2) SETTLEMENT OF CHARTER OF DEMAND DATED 24th JUNE, 2012 PENDING BEFORE THE INDUSTRIAL TRIBUNAL.

It has been mutually agreed between the parties that the permanent Workmen who are members of the Union and who were on the rolls of the Company as on 1st February, 2011 and continue to be on rolls of the Company as on date of signing of the settlement shall before the period from 01-02-2011 to 31-01-2014 be paid Rs. 1450/- per month ex-gratia as indicated in Annexure C of this Settlement. (Formula Rs. 1450x36x3 on actual attendance base). It is further agreed between the parties that such ex-gratia payment shall not be subject to any deductions under Labour Laws for the time being in force. Annexure C is attached herewith.

In view of the above, the parties mutually agree that the said payment is towards full and final settlement of the charter of demand dated 24-06-2012 and all such demands raised therein in the proceedings under Reference Number IT/55/2016

pending before the Industrial Tribunal, Panaji, Goa. Further, the parties shall file an application before the Hon'ble Industrial Tribunal, Panaji, Goa for Award in terms of Settlement. It is further agreed between the parties that such ex-gratia payment shall not be subject to any deductions under Labour Laws for the time being in force.

Further:

- (i) Those eligible Workmen as above who have superannuated or died/expired during the course of their employment shall be eligible to receive the above mentioned ex-gratia.
- (ii) It has been mutually agreed between the parties that those permanent Workmen and members of the Union who have resigned from the services between 31st January, 2011 and the date of signing this Settlement or who have submitted resignation and are under notice period shall not be eligible for the ex-gratia payment mentioned above.

3) BENEFITS OF WAGE REVISION & OTHER TERMS & CONDITIONS OF SERVICE FOR THE PERIOD 1st FEBRUARY, 2014 TO 31st JANUARY, 2017 AND 1st FEBRUARY, 2017 TO TILL 31st JANUARY, 2020

A. Period from 1st February, 2014 to 31st January, 2017: It has been mutually agreed between the parties that the permanent Workmen who are members of the Union and who were on the rolls of the Company as on 1st February, 2014 and continues to be rolls of the Company as on date of signing of the settlement shall before the period 01-02-2014 to 31-01-2017 be paid Rs. 1500/- per month ex-gratia as indicated in Annexure D of this settlement. Annexure D is attached herewith.

(Formula Rs. $1500 \times 36 \times 2$ on actual attendance base). It is further agreed between the parties that such ex-gratia payment shall not be subject to any deductions under Labour Laws for the time being in force.

B. Period from 1st February, 2017 to 31st January, 2020: The operating period of this revision shall be 1st February, 2017 to 31st January, 2020 and for this period the permanent Workmen who are members of the Union and who were on the rolls of the Company on 1st February, 2017 and continued to be on the rolls on the Company on the date of signing this settlement shall be paid Rs. 1600/- per month as ex-gratia as mentioned in Annexure E. Annexure E is attached herewith. (Formula Rs. $1600 \times 36 \times 1$ on actual

attendance base) It is further agreed between the Parties that such ex-gratia payment shall not be subject to any deductions under Labour Laws for the time being in force.

- (i) Those eligible Workmen as above who have superannuated or died/expired during the course of their employment shall be eligible to receive the above mentioned ex-gratia.
- (ii) It has been mutually agreed between the parties that those permanent Workmen and members of the Union who have resigned from the services between 31st January, 2011 and the date of signing this Settlement or who have submitted resignation and are under notice period shall not be eligible for the ex-gratia payment mentioned above.

In view of payments received as above, the Union agrees not to raise any demand in respect of the period from 1st February, 2014 till 31st January, 2020 involving financial liabilities or otherwise on the Management. This will be treated as full and final settlement of all demands for the said period from 1st February, 2014 to 31st January, 2020.

4) WAGE REVISION FOR THREE YEARS PERIOD FROM 2020 TO 2023.

Union has requested the Management that as all pending matters are amicably settled, the wage revision for the period from 2020 to 2023 should also be settled in the larger interest.

Since the Hotel had closed its operations from April, 2020 till October, 2020 due to Covid-19 Pandemic and consequent lockdown/Government imposed restrictions and salaries were not paid for the period from May, 2020 to October, 2020, it has been mutually agreed that the terms of this settlement shall be for a period of three years commencing from 1st November, 2020 (i.e. the date on which the Hotel restarted operations) till 31st October, 2023. Accordingly, it is further agreed between the parties that from the period from May, 2020 to October, 2020 the workmen shall not raise any claim over the above compensation paid for the said period and such compensation shall not be subject to deductions.

A. Period of Settlement and Applicability:

This settlement shall be operative for a period of three years from 1st November, 2020 to 31st October, 2023 and applicable to only those permanent Workmen who are members of the Union and who were on the permanent rolls of the company as of 1st November, 2020 and continued to be on the rolls of the Company as on the date of signing this settlement

and as mentioned in Annexure F, attached herewith.

B. Grades and Scales:

It has been mutually agreed between both the parties that Grades and Scales shall be revised as under:

GRADE SCALE

- I. 825-115-1400-125-2025-135-2700-145-3425-155-4200-165-5025-175-5900-185-6825.
- II. 1025-125-1650-135-2325-145-3050-155-3825-165-4650-175-5525-185-6450-195-7425.
- III. 1225-135-1900-145-2625-155-3400-165-4225-175-5100-185-6025-195-7000-205-8025.
- IV. 1425-145-2150-155-2925-165-3750-175-4625-185-5550-195-6525-205-7550-215-8625.
- V. 1625-155-2400-165-3225-175-1400-185-5025-195-6000-205-7025-215-8100-225-9225.
- VI. 1825-165-2650-175-3525-185-4450-195-5425-205-6450-215-7525-225-8650-235-9825.
- VII. 2025-175-2900-185-3825-195-4800-205-5825-215-6900-225-8025-235-9200-245-10425-255-11700-265-13025.
- VIII. 2225-185-3150-195-4125-205-5150-215-6225-225-7350-235-8525-245-9750-265-12350-275-13725.

C. Restructuring wage:

It has been mutually agreed between both the parties that the gross wages as on 31st October, 2020 shall be arrived at after adding the monthly ex-gratia payment as referred to in Clause 2 (Rs. 1450/-), 3A (Rs. 1500/-) Workman to the maximum of Rs. 4550/-. It is further agreed between the parties that to the total gross amount thus arrived at shall be added a sum of Rs. 1600/- and the total cumulative amount shall be paid in the manner provided hereunder:

a) BASIC: It has been mutually agreed between the parties that 40% of the Gross wages less VDA shall be treated as the new Basic and fitted into respected Grade and Scale of each employee... The next annual increment shall be due on 1st April, 2022.

b) FIXED DEARNESS ALLOWANCE: It has been mutually agreed between the parties that out of the balance Gross wage (less new Basic and VDA) Rs. 2500/- shall be the new FDA.

c) HOUSE RENT ALLOWANCE AND CHILDREN'S EDUCATION ALLOWANCE: It has been further mutually agreed between the parties that the balance Gross salary (less new Basic, FDA and VDA) shall be divided between HRA and children's Education Allowance in equal proportion.

d) VARIABLE DEARNESS ALLOWANCE: It has been mutually agreed between the parties that till 31-10-2023, the VDA shall follow ALL INDIA CONSUMER PRICE INDEX FOR INDUSTRIAL WORKERS 1960=100 base in the following manner:

CPI INDEX 1960=100 NEUTRALISED AT 1672 POINTS

From	To	Rate per Point	Total Points	Amount Payable
1673	3026	1.3	1353	1758.0
3027	8000	1.4	4512	
8001	10000	1.5	2500	
10001 and above		1.6		

The Index Average per quarter and payable quarter shall be as follows:

Index for Quarter	Payable for the Quarter
Jan - March	July - Sept
April - June	Oct - Dec
July - Sept	Jan - March
Oct - Dec	April - June

5) NATIONAL & FESTIVAL HOLIDAYS:

It has been mutually agreed between the parties the Workmen shall be entitled to the following National and Festival Holidays.

1. REPUBLIC DAY
2. GOOD FRIDAY
3. LABOUR DAY
4. INDEPENDENCE DAY
5. GANESH CHATURTHI (FIRST DAY)
6. GANDHI JAYANTI
7. ST FRANCIS FEST
8. GOA LIBRATION DAY
9. CHRISTMAS DAY

In addition to above Holidays workmen can avail of two Restricted Holidays of their choice.

6) OVERTIME PAYMENT: It has been mutually agreed between the parties that the existing practice of paying Overtime shall continue unaltered.

7) LEAVE: It has been mutually agreed between the parties that the existing Confirmed Employees shall be eligible for following leave

- A. Privilege leave 27 days per year provided he has put in 240 days attendance in a calendar year.

- B. Maximum balance as per prevailing practice.
- C. Casual leave 07 days per calendar year non-cumulative.
- D. Sick leave 10 days for those employees who are out of ESIC coverage. Maximum balance 20 days.

8) GRATUTITY: It has been mutually agreed between the parties that the present practice of payment of Gratuity shall continue for all existing workmen as referred in Annexure F.

9) LOAN: It has been mutually agreed between the parties that the present practice of advancing Rs. 10,000/- as interest free loan for repair of house, purchase of land for residential purpose and for marriage shall continue, subject however to the condition that the benefit shall be restricted to maximum of twenty applicants per year. However the decision of the Management shall be final.

10) COMPENSATION IN CASE OF ACCIDENTAL DEATH OF EMPLOYEE WHILE ON DUTY: It has been mutually agreed between the parties that all permanent employees shall contribute one day's basic wage and Management shall match with equal amount and pay the same to legal heir of the deceased employees.

11) ACCIDENT ON DUTY: It has been mutually agreed between the parties that the existing practice of giving/arranging first aid through company's doctor or Government/private hospital shall be continued.

12) STAFF DAY: It has been mutually agreed between the parties that the practice of giving a gift of Rs. 1500/- value each to those Workmen who have completed ten years of service in the Company shall be continued.

13) APPLICABILITY:

- A. The settlement shall be applicable to all the permanent Workmen who are members of the Union as referred in Annexure A, B, C, D, E and F and who are on the rolls of the settlement.
- B. It has been agreed that the benefit of this settlement shall not be extended to workmen who have raised individual dispute against the Company. However all efforts will be made to amicably settle these matters in consultation with the Union/concerned individual workman.
- C. The workmen availing the benefits under this settlement shall contribute 7.5% of the total arrears to the Union signatory to this settlement. The said amount shall be recovered from the arrears arising from this settlement.

The terms & conditions of service and other benefits/privileges incorporated in the earlier settlements and not varied by this settlement or by any law for the time being in force shall continue as if specifically provided in this settlement.

14) PERIOD OF SETTLEMENT: This settlement shall be binding for three years period commencing from 1st November, 2020 and ending on 31st October, 2023 and shall continue to remain in force and binding thereafter until it is terminated in the manner envisaged under section 19 of the Industrial dispute Act 1947.

15) PAYMENTS OF ARREARS:

- A. The revised salary shall be incorporated in September, 2021 salary and the arrears from 1st November, 2020 to 31st August, 2021 shall be paid on or before 30th June, 2022.
- B. The arrears arising out of this settlement shall be paid in installments as follows:
 - i. The Payment as per Annexure A and 50% of the amount as mentioned in Annexure B shall be paid on or before 30th September, 2021.
 - ii. The remaining 50% of Annexure B and 50% of the payment as per Annexure C shall be paid two days before Diwali 2021.
 - iii. Balance 50% of payment as per Annexure C and 50% of Annexure D shall be paid during Christmas 2021.
 - iv. The remaining 50% of the Payment as per Annexure D and 50% of Annexure E shall be paid on or before 25th March, 2022.
 - v. Balance 50% of payment as per Annexure E shall be paid on or before 31st May, 2022.

The Tax applicable as per Income Tax Act will be calculated and deducted at source while paying each instalment or monthly salary as done in the past.

16) MISCELLANEOUS:

- A. As agreed, the Signatory Union has obtained approval of the members to sign the present settlement at the General Body Meeting held on 25-08-2021 and the resolution so passed in the General Body Meeting has been handed over to the company Management.
- B. It has been mutually agreed by the parties that this Settlement is in full and final settlement of all the demands raised by the Union and workmen in their Charter of Demands dated 21-01-2008, and the

consequent Award dated 29-01-2015 of Industrial Tribunal in Reference No. It/28/2009 and the consequent Writ Petition number 486/2015 and 540/2015 pending before in the High Court of Bombay at Goa, and the Charter of Demands dated 24-06-2012 being currently adjudicated in reference Number IT/55/2016 before the Industrial Tribunal, Panaji.

- C. In view of the present settlement, both the parties agree to jointly file consent terms on the basis of the terms mentioned in Clause (1) above in Writ Petition No. 486/2015 and Writ Petition No. 540/2015 pending before the Hon'ble High Court of Bombay at Goa for order in terms of settlement.
- D. In view of the present settlement, both the parties agree to jointly file an application on the basis of the terms mentioned in Clause (2) above before the Industrial Tribunal, Panaji-Goa in Reference No. IT/55/2016 with a prayer for an award in terms of the settlement.
- E. It has been further mutually agreed by the parties that, in the view of the above mentioned amicable settlement arrived between the parties:
- i. The Union agrees not to pursue reference IT/37/2013 in the matter of service charges presently pending before the Industrial Tribunal Panaji Goa and the parties further agree to file an application before the Industrial Tribunal, Panaji for an award in terms of settlement.
 - ii. The Management agrees that the Management shall pay the Union/workmen out of the aggregate amount of Rs. 11,29,200 which is deposited before the High Court of Bombay at Goa vide cheque bearing No. 464017 dated 10-10-2020 drawn on IDBI Bank, Panaji Goa, in Writ Petition 918/2019 an amount Rs. 94,062/- (8.33% towards ex-gratia and the concerned workmen shall be entitled to withdraw the said amount by making an application before the High Court of Bombay at Goa.

Both parties agree to sign an application for award in terms of settlement/consent terms covering-clauses 16 (A), 16 (B), 16 (C), 16 (D), and 16 (E) which will be signed simultaneously with the signing of this terms of settlement for submitting to the Court/Appropriate authorities for obtaining the appropriate orders.

- F. The Union agrees that in view of the above,

during the period of the settlement, workmen/Union shall not raise any demands involving any financial or any other liability on the Company.

- G. The Union and the Workmen agree to maintain industrial peace and harmony during the subsistence of the settlement and shall not resort to any direct actions, and shall take recourse to the machinery provided under the Industrial Dispute Act, 1947.
- H. All such workmen who wish to avail the benefits under this settlements with all its terms and conditions incorporated therein shall have to give specific individual declaration as enclosed hereto as Annexure G within 10 days of the date of the settlement that the terms of this settlement are acceptable and binding upon him/her. He/she would have to further declare that the settlement is in full and final settlement of all the demands made by him/her or by and Union on his/her behalf and agree not to raise or pursue any demand raised by him/her or any Union on his/her behalf on any items covered by the settlement. The workmen referred to in the annexure A, B, C, D, E and F of the settlement shall make a contribution @7.5% of the arrears received by them to the Union who is signatory to this settlement and the management agree to deduct the said amount at source from the arrears payable to the workmen under the settlement and transfer the said amount to bank account of the Union.
- I. The terms and conditions of service and other benefits/privileges incorporated in the earlier settlements or any written understanding between the parties and not varied by this settlement or by any law from time to time in force shall continue as if specifically provided in this settlement.
- J. It has been agreed mutually to submit jointly copies of this settlement to The Labour Commissioner Panaji for Registration under Industrial Disputes Act, 1947.

16. I have gone through the application dated 13-10-2021 along with the Memorandum of Settlement at Exh. 49 Colly filed by both the Parties, which in my view, are just and fair and in the interest of both the Workmen/Party I as well as Employer/Party II and hence, the same are accepted.

In view of above, I pass the following:

ORDER

- (i) The reference at the instance of both the Parties stands disposed off in view of the application dated 13-10-2021 at Exhibit 49 Colly.
- (ii) Consequently, the benefits of the Settlement shall be extended to the workmen of Party II.
- (iii) No order as to costs.
- (iv) Inform the Government accordingly.

Sd/-
(Bela N. Naik),
Presiding Officer,
Industrial Tribunal and
Labour Court.

Notification

No. 28/2/2021-LAB/603

The following Award passed by the Labour Court-II, at Panaji-Goa on 10-11-2021 in Case No. Ref. LC-II/IT/06/17 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).
Porvorim, 7th December, 2021.

IN THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before **Shri Suresh N. Narulkar, Hon'ble**
Presiding Officer)

Case No. LC-II/IT/06/17

Shri Adil Ismail Shaikh,
R/o. GRB Colony,
CF-10, Nr. Karmali School,
Head Land Sada,
Mormugao – Goa.

..... Workman/Party-I

V/s

The Mormugao Municipal Council,
Vasco da Gama, Goa.
Workman/Party-I represented by Adv. Shri S. Naik.
Employer/Party-II represented by Adv. Shri. V.
Pednekar.

..... Employer/Party-II

Panaji, dated: 10-11-2021

AWARD

1. In Exercise of the powers conferred by Clause

(c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act, 14 of 1947), the Government of Goa, by Order dated 07-04-2017, bearing No. 28/48/2016-LAB/218, referred the following dispute for its adjudication to this Labour Court-II, Panaji, Goa.

- “(1) *Whether the action of the Mormugao Municipal Council, Vasco da Gama, in terminating the services of Shri Adil Ismail Shaikh, with effect from 01-10-2012, is legal and justified?*
- (2) *If not, what relief, the Workman is entitled to?*”

2. On receipt of the reference, a case was registered under No. LC-II/IT/06/2017 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 26-07-2017 at Exhibit-6. The facts of the case in brief as pleaded by the Workman are that on 06-03-2011, he had filed an application for the post of 'Watchman' to the Chief Officer of the Employer/Party-II (for short "Employer"). He stated that he was called for interview on 11-08-2011 at 2.30 p.m. He stated that he was also issued a call letter dated 07-10-2011 calling for interview alongwith documents. He stated that out of two interviews held, in the first interview, he scored 30 out of 30 marks and in the second interview, he secured 49 marks out of 50. He stated that he was selected for the post of 'Watchman' as per minutes dated 13-10-2011. He stated that before the aforesaid interview, Smt. Suchita Shirodkar and Milind Chopdekar demanded a sum of Rs. 4,70,000/- to pay to the Councilors and other staff of the Employer. He stated that he made available the said amount by taking loan from VPK Urban Co-op. Credit Society, Mardol, Goa and gold loan from Muthoot Finance Corporation Ltd. by keeping gold ornaments. He stated that he was offered an appointment letter dated 14-10-2011 by the Chief Officer of the Employer.

3. He stated that he was issued a show cause notice dated 15-05-2012. He stated that he replied to the said show cause notice by his letter dated 21-05-2012. He stated that he was also issued another show-cause notice dated 04-06-2012. He stated that he replied to the said show cause notice by his letter dated 05-06-2012. He stated that the said notices were pertaining to the forged document produced by him at the time of his appointment for the post of watchman i.e. school leaving certificate of Government High School, Baina, Vasco, Goa. He stated that in his reply to the said show cause notices, he clearly mentioned how he had produced the

documents. He stated that vide letter dated 21-06-2012, he was informed that the Employer has decided to hold enquiry under Rule 14 of Central Civil Service (classification, control and appeal) Rules, 1965. He stated that he filed his reply to the aforesaid memorandum, vide his letter dated 30-07-2012. He stated that vide letter dated 31-07-2012, the Employer issued a memorandum for appointment of Enquiry Officer in order to conduct departmental enquiry on 07-08-2012 at 11.30 a.m. before the Ld. Enquiry Officer, Shri Premanand Y. Naik, the Ex Officer of the Employer. He stated that vide letter dated 07-08-2012, the Employer issued another Memorandum for enquiry and appointment of legal practitioner/Government Servant for cross-examination of witness and the said request was rejected by the Employer. He stated that vide letter dated 10-08-2012, the Employer issued an order of appointment of presenting officer, Shri Gauresh Parsekar. He stated that the Ld. Enquiry Officer recorded the statements of the witnesses. He stated that at the time of recording the evidence, he had informed Ld. Enquiry Officer to write the name of the person, who had taken the money and the same was rejected by Ld. Enquiry Officer. He stated that the said act of Ld. Enquiry Officer created doubt in his mind and that he started to change the topic. He stated that Ld. Enquiry Officer passed the order without giving him any opportunity to cross-examine the witness. He stated that he has also filed a complaint against Ld. Enquiry Officer before the Director of Municipal Administration, Panaji-Goa, vide his letter dated 05-09-2012 and the same is pending. He stated that through his reliable sources, he came to know that the above certificates was issued by Mr. Nitin Chopdekar through one person, namely Mr. Peter, who was working with the Employer/Municipality. He stated that the said Mr. Peter is also close to Nitin Chopdekar and Suchita Shirodkar. He stated that he had filed complaint before all the Government authorities, but till date, they had not taken any action against the said persons nor collected any enquiry against the said persons since they are influential and some ministers and MLAs are involved with them. The Workman therefore prayed for an order directing them to reinstate him in the services of the Employer as Watchman with full back wages from the date of his suspension till date.

4. The Employer resisted the claim of the Workman, by filing its written statement on 19-01-2018 at Exb.13. The Employer submitted that the claim of the Workman is not tenable as the Workman has produced forged documents in order to seek employment and that the present claim has been filed only to harass them.

The Employer stated that as per the recruitment rules, the post of watchman is required to be filled by direct recruitment. The Employer stated that the educational qualification required for the post of watchman is standard VIII. The Employer stated that they had published a notice dated 22-09-2011 in the local newspaper calling for the applications for the different posts. The Employer stated that in pursuance to the said advertisement published in the local newspaper, the Workman had submitted an application for the post of watchman. The Employer stated that the Workman was called for an interview alongwith the documents. The Employer stated that the interview was conducted in the presence of Smt. Suchita Shirodkar, the then Chairman of the Employer and Shri Meghnath Parab, the then Chief Officer of the Employer. The Employer stated that as per the records, the Workman had scored 49 out of 50 and based on the marks and the other documents which are required to be produced, he was selected for the post of watchman. The Employer stated that the departmental selection committee held on 13-10-2011 alongwith the mark sheet of the candidate appeared for interview for the post of watchman duly signed by the members. The Employer stated that the Workman was offered an employment after taking on record all the requisite documents produced by him. The Employer stated that the Workman was appointed as a 'watchman' after his medical examination.

5. The Employer stated that one Mr. Kumar Naik, vide his letter dated 02-05-2012 alleged that the Workman never studied in the Government High School, Baina, Vasco da Gama, Goa and that the documents submitted by him are forged documents. The Employer stated that the said Mr. Kumar Naik submitted the xerox copy of the general register of the school. The Employer stated that based on the said letter, the Employer sent a show cause notice dated 15-05-2012 to the Workman. The Employer stated that a notice was also sent to the Head Master of the Government High School, Baina. The Employer stated that they received a letter from the Government High School, Baina, vide its letter dated 24-05-2012 stating that the registration No. 3940 was not of the Workman but it was one Padma Mahableshwar Raikar. The Employer stated that Head Master of the said Government High School further stated that the school leaving certificate was issued to the said Padma Mahableshwar Raikar and not to the Workman. The Employer stated that vide another show cause notice dated 04-06-2012 sent to the Workman, he was asked to explain in writing within 48 hours from the date of

receipt of the said notice as to why he shall not be removed from the services as per clause No. 4 of offer of appointment letter dated 14-10-2011. The Employer stated that vide his reply dated 05-06-2012, the Workman replied to the aforesaid show cause notice denying the allegations and requested to cancel the said show cause notice and allow him to work. The Employer stated that in its council meeting held on 21-06-2012, they resolved to initiate action against the Workman. The Employer stated that accordingly a memorandum was issued to the Workman. The Employer stated that the Workman replied to the aforesaid memorandum, vide his reply dated 30-07-2012.

6. The Employer stated that they had appointed Shri Premand Y. Naik, OSD as an Enquiry Officer to conduct the enquiry. The Employer stated that notice was sent to the Workman, however, he adopted all the means to delay the enquiry. The Employer stated that the Workman was filing various applications before the Ld. Enquiry Officer to delay the proceedings. The Employer stated that the Workman has made allegations against the Ld. Enquiry Officer that he has not followed the proper procedure in properly conducting the enquiry and that the trial has been conducted under political pressure etc. The Employer stated that the Workman was represented by Shri Gauresh Ramesh Parsekar, LDC in the departmental enquiry. The Employer stated that they have followed proper procedure as per law. The Employer stated that after following due process of law and giving opportunities to the Workman, Ld. Enquiry Officer submitted his report along with his findings. The Employer stated that the said report was placed before its council and it was unanimously decided to terminate the services of the Workman with immediate effect. The Employer stated that accordingly the services of the Workman were terminated. The Employer stated that the Workman started filing complaints before various authorities and alleging the Councilors, Chairperson that they obtained the forged document through one Mr. Peter, who is close to its Councilors. The Employer stated that after being frustrated, the Workman also put allegations on ministers and MLA. The Employer stated that the said allegations are absolutely false and baseless. The Employer stated that Ld. Enquiry Officer has conducted a fair trial by giving opportunities to the Workman without any pressure from any Councilors, MLA, Minister or any person. The Employer stated that in order to save himself from the forgery committed by him, the Workman has been filing false complaints before various Government authorities like Goa Human Rights Commission, Director of Municipal Administration,

Vasco Police, Crime Branch, Director General of Police, Central Bureau of Investigation and also to the Chief Minister of Goa. The Employer stated that they have already filed an FIR at the Vasco Police for the forgery committed by the Workman. The Employer denied the overall case as pleaded by the Workman and prayed for dismissal of the claim statement with cost.

7. Thereafter, an opportunity was given to the Workman to file his re-joinder if any to the written statement of the Employer. The Workman has however, failed to file his re-joinder by remaining absent.

8. This court framed the following issues on 18-12-2018 at Exb.14. The said issues were up-dated on 17-08-2021 at Exb.16. Among the said issues, Issue No.1 and 2 have been treated as preliminary issues.

1. Whether a free, fair and proper enquiry was conducted against the Workman?
2. Whether the charges of misconduct levelled against the workman have been proved to the satisfaction of this court by acceptable evidence?
3. Whether the Workman/Party I proves that the action of the Employer/Party II in terminating his services w.e.f. 01-10-2012 is illegal and unjustified?
4. Whether the Workman/Party I is entitled to any relief?
5. What Order? What Award?

9. My answers to the aforesaid issues are as under:

- (a) Issue No. 1 : In the Negative.
- (b) Issue No. 2 : In the Negative.
- (c) Issue No. 3 : In the Negative.
- (d) Issue No. 4 & 5 : As per final order.

10. In the case of **V.N.S. Engineering Services v/s. Industrial Tribunal of Goa, Daman and Diu and Anr.**, reported in 1987 II LLN 968, the Hon'ble High Court of Bombay has held that "*there is nothing in the Industrial Disputes Act, 1947 that indicates a departure from the general rule that he, who approaches a court for relief, should prove his case i.e. the obligation to lead evidence to establish an allegation. The test being that he, who does not lead evidence, must fail. The Hon'ble High Court of Bombay further held that the provisions of Rule-10-B of the I.D. (Central Rules), 1957 which requires the party raising a dispute to file a statement of demands relating only to the issue in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved,*

clearly indicates that the party who raises the industrial disputes, is bound to prove the contention raised by him and an Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute".

11. In the case of **Airtech Pvt. Ltd. v/s. State of U.P. & Ors., reported in 1984 (49) FLR 38**, the Hon'ble High Court of Allahabad has held that "*the matter can be looked at from another angle, which party will fail if the evidence is not led before the Labour Court in proceedings in a reference made to it for adjudication by the State Government? The obvious answer is that the Workman will fail. Here the reference was made by the State Government at the instance of the Workman and for the benefit of the Workman. In the absence of any evidence led by or on behalf of the Workman, the reference is bound to be answered by the court against the Workman. In such a situation it is not necessary for the Employers to lead any evidence at all. This matter was dealt with by the Supreme Court in Shankar Chaudhart v/s. Britania Biscuits Co. Ltd. in paragraph 30th Court held that the Labour Court or Industrial Tribunal have all the trappings of a court. In paragraph 31 it held that any party appearing before a Labour Court or Industrial Tribunal 'Must' make a claim or demur the claim of the other side and when there is burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead evidence. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led. It must seek an opportunity to lead evidence*".

12. In the case of **V.K. Raj Industries v/s Labour Court (I) and Ors. reported in the year 1981 (29) FLR, 194** of Allahabad High Court has held that the proceedings before the Industrial Tribunal are judicial in nature, even though the Indian Evidence Act, is not applicable to the proceeding before the Industrial Court, but the principle underlying the said Act are applicable. The High Court has held that "*it is well settled that if a party challenges the validity of an order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court has also held that if the Workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the Workman and he will not be entitled any relief*".

13. The principle laid down by the Hon'ble High Courts in its respective case are still holds good. Applying the law laid down by the Hon'ble High Courts, in the instant case, the order of reference has been issued by the Government of Goa at the instance of the Workman, who has raised the present

dispute pertaining to his termination of services w.e.f. 01-01-2012 by the Employer by contending to be illegal and unjustified. The Workman appeared before this court and filed his pleadings, setting up the grounds of challenge to his alleged illegal termination of service. The Employer resisted the claim of the Workman as by contending that the Workman has submitted forged documents and therefore his services have been terminated by following due procedure of law. This court also framed certain issues, based on the pleadings filed by the respective parties. It was therefore incumbent upon the Workman to prove his case by leading material evidence either oral or documentary. Thereafter, the Workman filed his affidavit in evidence in support of his case. The Workman has however failed to remain present for his further examination in chief as well as cross-examination. Consequently, the Workman failed to prove that the termination of his services by the Employer w.e.f. 01-10-2012 is illegal and unjustified. Thus, in the absence of any evidence on record, it is held that the action of the Employer in terminating the services of Shri Adil Ismail Shaikh, with effect from 01-10-2012, is legal and justified. The Workman is therefore not entitled to any relief as sought by him. The issue No. 1 to issue No. 4 are therefore answered in the Negative.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of the Mormugao Municipal Council, Vasco da Gama, in terminating the services of Shri Adil Ismail Shaikh, with effect from 01-10-2012, is legal and justified.
2. The Workman Shri Adil Ismail Shaikh, Watchman is not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.



Department of Law & Judiciary
Law (Establishment) Division

Addendum

No. 2-2-2020-LD (Estt)/62

Read: (1) Order No. 2-2-2020-LD(Estt.)/2077 dated 07-10-2021;

(i) Addendum No. 2-2-2020-LD(Estt.)/2501 dated 14-12-2021.

(2) Order No. 2-2-2020-LD(Estt.)/2272 dated 09-11-2021;

(ii) Corrigendum No. 2-2-2020-LD(Estt.)/2570 dated 23-12-2021.

In the above read Order (2), the following lines shall be added in the 2nd Para in the fifth line after the seventh word, the words, "The Officers promoted on regular basis to the post of District

Registrar are entitled to pay and allowances from the date of accepting the promotion in relaxation to F. R. 17 (1)."

All the remaining contents of the said Order shall remain unchanged.

By order and in the name of the Governor of Goa.

Amir Y. Parab, Under Secretary (Law-Estt.).
Porvorim, 13th January, 2022.

Department of Planning

Directorate of Planning, Statistics & Evaluation

Order

No. DPSE/ADMN/DEL-POW/2022/96

Ref: Order No. DPSE/ADMN/DEL-POW/2016/945 dated 13-05-2021.

In supersession of above read order, the department of Planning, Statistics & Evaluation, Porvorim is please to re-constitute a "Swacch Bharat" Committee to maintain cleanliness in and around the premises and as a supervisory mechanism, as given below:

1. Dr. Y. Durga Prasad, Director	— Chairman.
2. Shri Digambar V. Kalapurkar, Dy. Director	— Vice-Chairman.
3. Kum. Neumani M. Rodrigues, Dy. Director	— Member Secretary.
4. Smt. Gail A. Azavedo, Research Assistant	— Nodal Officer.
5. Smt. Margarita Esteves, Research Assistant	— Member.
6. Smt. Sara M.C. Fernandes, Head Clerk	— Member.
7. Shri Alex Fernandes, Data Entry Operator	— Member.
8. Shri Mahesh Pilgaonkar, Statistical Assistant	— Member.
9. Shri Rajesh Veluskar, Statistical Assistant	— Member.
10. Smt. Priyanka Nayak, Investigator	— Member.

Dr. Y. Durga Prasad, Director (Planning).

Porvorim, 14th January, 2022.

Notification

No. DPSE/ADMN/DEL-POW/2022/100

Sub.: No. DPSE/ADMN/DEL-POW/2016/951 dated 29-09-2020.

In supersession of above referred Notification regarding appointment of Assistant Public Information Officer, APIO-II, the undersigned conveys to re-designate the appointment of the Officer on promotion as Assistant Public Information Officer II under the Right to Information Act, 2005 as follows:

Sr. No.	Name & the contact details of the Officers	Designated authority under RTI Act, 2005	Remarks
1.	Ms. Neumani M. Rodrigues, Dy. Director Ph. 0832-2417437/Fax: 0832-2417437 Email: cord-dpse.goa@nic.in	Assistant Public Information Officer-II	For all other matters.

Dr. Y. Durga Prasad, Director (Planning).

Porvorim, 14th January, 2022.

Department of Printing & Stationery

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Corrigenda

In the Official Gazette, Series II No. 42 dated 13-01-2022 on page No. 981 the Heading "Department of Power" may be corrected to read as "Department of Public Works". All the other contents remain the same.

Extraordinary No. 1, Series II No. 42 dated 13-01-2022 on page No. 991 after Notification No. LA/Legn/2022/2057 of the "Goa Legislature Secretariat", and before Notification No. 1/7/2017-GAD-II/205, the Heading "Government of Goa, Department of General Administration" may be inserted.

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